IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1910.

IN THE MATTER OF THE APPLICATION

OF

GEORGE F. HARDING FOR A WRIT OF MANDAMUS DIRECTED TO THE HONORABLE ARTHUR L. SANBORN, DISTRICT JUDGE OF THE WESTERN DISTRICT OF WISCONSIN, HOLDING THE UNITED STATES CIRCUIT COURT IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION THEREOF, AND DIRECTED ALSO TO THE SAID CIRCUIT COURT.

Motion for Leave to File Petition for Writ of Mandamus.

Now comes the petitioner, GEORGE F. HARDING, by William J. Ammen, his attorney, and moves the court for leave to file the petition for writ of mandamus hereto annexed; and further moves that an order and rule be entered and issued directing the HONORABLE ARTHUR L. SANBORN, District Judge of the Western District of Wisconsin, holding the United States Circuit Court in and for the Northern District of Illinois, Eastern Division, and also directing the said Circuit Court, to show cause why a writ of mandamus should not issue against them, and each of them, in accordance with the prayer of said petition, and why your petitioner should not have such relief, and such other and further relief in the premises as may be just and meet.

WILLIAM J. AMMEN,
Attorney for Petitioner.

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Exhibits.

"A"—This exhibit embraces the entire Certificate of Evidence signed by Judge Sanborn, November 19, 1909, in relation to the proof, and other proceedings, on the hearing of the petition for leave to amend removal petition. A part of the proof on the hearing of said petition for leave to amend was the printed record of 466 pages filed in the United States Supreme Court on petition for certiorari. That record forms Part II of "Exhibit A," and includes the original indexes thereto. Said Part II is a reprint, page for page and line for line, of the said original printed record. Part I of said "Exhibit A" embraces the remaining portion of said Certificate of Evidence, with an index thereto. All other exhibits referred to in the Petition are annexed to the Petition.

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To the Honorable Supreme Court of the United States:

Your petitioner, GEORGE F. HARDING, respectfully shows:

FIRST: For the purposes of reference, and to avoid repetition of material facts to be shown by this petition, and by way of precaution and for greater safety, a true and complete copy of the "Certificate of Evidence," signed by Judge ARTHUR L. SANBORN on November 19, 1909,* consisting of two parts bound together, and marked "Exhibit A," is presented and submitted with this petition. Only a portion thereof is relevant or material or necessary to be stated in this petition, but your petitioner is advised that the whole should be thus placed before this Honorable court in order to negative any

* Time for settlement of certificate of evidence was duly extended beyond November 19, 1909, by orders of record in the preceding term of the court.

possible presumption or claim that parts thereof, *which might otherwise be omitted,* contain matters which should be set forth in this petition or which may be regarded or claimed to be material or relevant by respondent to this petition.

SECOND: Said *"Certificate of Evidence"* shown by said "Exhibit A" is entitled in the case of your petitioner, GEORGE F. HARDING, as complainant, *versus* the STANDARD OIL COMPANY ET AL.," as defendants, in chancery No. 28865 in the Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof, and, as shown pages 1-2 of Part I of said "Exhibit A," begins as follows:

> "BE IT REMEMBERED, that on the 23rd day of April, 1909, there came on to be heard before the Honorable ARTHUR L. SANBORN, as Presiding Judge holding said Circuit Court, the motion of the Corn Products Manufacturing Company, one of said defendants, filed herein on April 16, 1909, *asking for leave to amend its petition for removal in the above entitled cause,* the said Corn Products Manufacturing Company appearing herein by Levy Mayer and William J. Calhoun, its solicitors, and said George F. Harding, complainant, by George F. Harding and William J. Ammen, his solicitors, said George F. Harding and William J. Ammen appearing *specially* as solicitors for said complainant, *for the purpose only* of objecting to the hearing or allowance of said motion, as stated in the written appearance of William J. Ammen filed herein on the 16th day of April, 1909.
>
> "The court certifies that the motion to amend the removal petition, which motion was filed herein on April 16, 1909, was first presented to the Honorable K. M. Landis, on April 16, 1909,

who was then holding said Circuit Court, and who on that date entered herein an order upon said motion, which order appears of record herein.

"The court further certifies that all further hearing of said motion to amend said removal petition was on April 23, 1909, transferred by said Hon. K. M. Landis, then holding said Circuit Court, to the undersigned, Arthur L. Sanborn, as a Judge of said court.

"The court further certifies that thereafter on said April 23, 1909, at 2 P. M. in the afternoon of said date, the various solicitors and counsel for said George F. Harding, complainant, and said Corn Products Manufacturing Company being present, and the court having entered upon the hearing of said motion, Mr. Levy Mayer, one of the counsel for said Corn Products Manufacturing Company read said motion and the consents thereto attached to amend said removal petition, and referred to and read parts of *the printed transcript of record filed in the Supreme Court of the United States upon an application for a writ of certiorari* to the United States Circuit Court of Appeals for the Seventh Circuit, in the case of *George F. Harding et al.* v. *The Corn Products Refining Company et al.*, A COPY OF WHICH PRINTED TRANSCRIPT OF RECORD IS AS FOLLOWS:"

Said PRINTED TRANSCRIPT OF RECORD SO FILED IN THE SUPREME COURT OF THE UNITED STATES, which here follows in the said *Certificate of Evidence*, is duplicated, page for page and line for line, as Part II of said "Exhibit A"; and said Certificate of Evidence, as shown in Part I of said "Exhibit A," continues as follows:

"It is further certified that complainant insisted that the whole of said *Transcript* should

be considered as being in evidence and the same was so considered by the court."

HARDING SUIT IN STATE COURT.

THIRD: Said suit brought by your petitioner was begun in the Superior Court of Cook County, Illinois, by the filing of a bill in equity therein, on October 19, 1907, by your petitioner, as complainant, claiming relief, as a stockholder of the Corn Products Company, against the parties made defendant thereto, namely: the Standard Oil Company, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, corporations organized and existing under the laws of New Jersey, and Conrad H. Mathiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. C. Herget, Thomas P. Kingsford, William C. Sherwood and Edward T. Bedford. Said bill of complaint is shown on pages 313-351 of Part II of said "Exhibit A." *Said bill described your petitioner as* "A RESIDENT AND CITIZEN OF THE STATE OF CALIFORNIA," and contained no averment as to the residence or citizenship of any of the individuals made defendants thereto. The prayer thereof is shown on pages 349-351 of Part II of said "Exhibit A."

FOURTH: By leave of said Superior Court, your petitioner, on October 25, 1907, filed therein his amended bill of complaint in said cause, as printed on pages 356-397 of Part II of said "Exhibit A." Said amended bill described your petitioner as "a resident and citizen of the State of California," and contained no averment as to the residence or

citizenship of any of the individuals made defendants thereto. The names of the parties defendant, together with the prayer of said amended bill, are shown on pages 394-397 of Part II of said "Exhibit A." W. H. Nichols and E. P. Wemple, though named in the charging portion of said original bill, were inadvertently omitted by your petitioner in the prayer for process, and the prayer for relief contained therein, but this error was corrected in said amended bill, and, with this exception, the parties defendant were the same in both of said bills.

FIFTH: Process of summons was issued in the said suit brought by your petitioner, in due form, against said defendants, returnable on the first Monday of November, 1907, bearing date October 19, 1907. Said summons was duly returned by the Sheriff of said county, with endorsements thereon showing service on said four corporations, and on said defendants, Glass, Morton, Wagner and Calhoun, and showing the other defendants not found. Said summons and said return thereon appear on pages 351-352 of Part II of said "Exhibit A." On October 24, 1907, your petitioner filed in said cause in said Superior Court the affidavit of Abner C. Harding, entitled in said cause, dated and sworn to on October 23, 1907, stating that the said Standard Oil Company, and said defendants, Mathiessen, Sherwood, Heaton, Ream, Kingsford and Bedford, were then non-residents of the State of Illinois, and stating their places of residence, respectively, so far as informed in regard thereto, and further stating that said affiant had not been able to ascertain the resi-

dence of said defendants, Graham and Herget. Said affidavit appears on pages 354-355 of Part II of said "Exhibit A." It further appears, as hereinafter shown, that your petitioner had instituted a proceeding by notices and subpoenas duly served to take testimony of the defendants, Calhoun, Glass, Morton and others, before a notary public, at the office of such notary public, in Chicago, Illinois, beginning on November 4, 1907, at the hour of 11 o'clock A. M., in accordance with the statute of the State of Illinois in and for such case made and provided.

PETITION IN REAL ESTATE COMPANY'S SUIT.

SIXTH: On November 4, 1907, in a certain suit in equity then pending in said Circuit Court of the United States (after removal thereto from State Court), theretofore brought by the CHICAGO REAL ESTATE LOAN & TRUST COPMANY, an Illinois corporation, as complainant, against three of said New Jersey corporations, and others, as defendants, a certain petition or motion in writing was filed by said Corn Products Refining Company, by its solicitors, Moran, Mayer & Meyer, one Levy Mayer being a member of said firm. Said petition of November 4, 1907, was entitled in said suit brought by the said Real Estate Company, and alleged that that suit was brought in the State Court on May 4, 1907, and that on June 8, 1907, by leave of said Circuit Court, a transcript of record in said cause in the State Court was filed in said Circuit Court, and an order thereupon entered therein, staying further proceedings in the State Court, and restraining the complainant therein, and its officers, agents, representatives, counsel, solic-

itors and attorneys from proceeding further with the prosecution of said cause in the State Court; and that on July 8, 1907, the motion of said complainant therein to remand the cause to the State Court was denied by said Circuit Court; and that, notwithstanding the premises, on October 19, 1907, there was filed in the Superior Court of said Cook County a certain bill by your petitioner, as complainant, and thereupon said petition proceeded as follows, as shown on pages 74-75 of Part II of said "Exhibit A," namely:

> "Your petitioner, upon information and belief, states that George F. Harding was until recently the president of said Chicago Real Estate Loan & Trust Company, and that for many years last past he owned or controlled, and now owns or controls substantially all of the capital stock and controls all of the directors of said company, and that his son, George F. Harding, Jr., is now the president thereof; and that the board of directors of said company is now composed of either members of his family or of clerks or irresponsible nominees.
>
> "Your petitioner further alleges that said company was originally organized under the name of Peoria Starch Manufacturing Company, under the charter granted by the legislature of the State of Illinois on or about February 11, 1857; that, as its name implies, one of its objects of incorporation was to manufacture starch, and that its charter fixed the minimum of its capital stock at forty thousand dollars ($40,000), and the maximum at not more than two hundred and fifty thousand dollars ($250,000); that on or about March 27, 1894, the name of said Peoria Starch Manufacturing Company was changed to that of Chicago Real Estate Loan & Trust Company.

"Your petitioner further alleges, upon information and belief, the following:

"That said company has been used as a cloak and shield for the concealment of the property and effects of said George F. Harding, and that for some years last past he was a defendant to litigation in which his wife, in the State Courts of Illinois, sought to secure maintenance and alimony, which was finally decreed to her, and that in order to evade the payment of such maintenance and alimony, said company was used as a device whereby he might be enabled to either secrete his property or belittle the amount of his effects, and that various phases of said litigation appear in the printed reports of the decisions of the Illinois courts and of the United States Supreme Court, to which reference is hereby made, among them being *Harding* v. *Harding*, 79 Ill. App., 590; 79 Ill. App., 621; 180 Ill., 481; 180 Ill., 692; 205 Ill., 105; 198 U. S., 317. That said George F. Harding was, as your petitioner is informed and believes, born in the State of Illinois, and that he is now over seventy years of age, and that he has continuously during his life been a resident and citizen thereof *until he moved to California*, wherein he instituted proceedings for a divorce against his wife, and which proceedings are the same proceedings referred to in *Harding* v. *Harding*, 198 U. S., 317. That the bill herein is a class bill and alleges that said Chicago Real Estate Loan & Trust Company is the holder and owner of one thousand shares of the capital stock of said Corn Products Company * * *; that said second bill is also a class bill, and alleges that said George F. Harding is the owner and holder of five hundred shares of the stock of said Corn Products Company * * *; and your petitioner alleges upon information and belief that the stock upon which said first bill is based, and also that upon which said second bill is based was

owned, held or controlled on May 4, 1907, when said first bill was filed, and continuously since has been and still is owned, held or controlled by said Chicago Real Estate Loan & Trust Company and said George F. Harding, *or* either of them. YOUR PETITIONER FURTHER SHOWS THAT THE PARTIES DEFENDANT TO BOTH SUITS ARE SUBSTANTIALLY THE SAME, AND THAT THE SUBJECT MATTER THEREOF IS LIKEWISE SO, AND THAT THIS COURT IN SAID CAUSE PENDING HEREIN, HAS FIRST ACQUIRED JURISDICTION, WITH FULL POWER TO HEAR AND DETERMINE ALL CONTROVERSIES RELATING THERETO.

"Wherefore, the premises considered, your petitioner prays that said George F. Harding and said A. B. Joyner, his solicitor, *be enjoined and restrained from the further prosecution of said bill so filed in said Superior Court of Cook County*, on October 19, 1907, as amended on October 25, 1907, *and from taking any and all further proceedings therein;* and that they be *required* by the order of this court, *to dismiss said bill* so filed in said Superior Court of Cook County on October 19, 1907, as amended on October 25, 1907."

Said petition of November 4, 1907, was sworn to on that date by one Hal C. Bangs, a clerk or employe of said Mayer, said affidavit appended to said petition and filed therewith and sworn to by him being as follows:

"Hal C. Bangs, being first duly sworn, upon oath, deposes and says that *he is the agent in this behalf of said Corn Products Refining Company; that he is familiar with said litigation and has made careful, exhaustive and diligent search into the facts and circumstances detailed in the above and foregoing motion;* that all of the facts therein stated, except the facts therein alleged upon information and belief, are true, and as to

the facts therein alleged to be upon information and belief, he believes the same to be true."

Said petition of Nov. 4, 1907, together with said affidavit thereto, appears on pages 73-6 of Part II of said "Exhibit A."

SEVENTH: Said order of said Circuit Court entered on June 8, 1907, made on motion of said firm of said Mayer, as solicitors for said Corn Products Manufacturing Company, granting leave to file and ordering filed in said Circuit Court a transcript of the record of the State Court in said Real Estate Company's suit, and staying the further prosecution of that suit, and enjoining said Real Estate Company, its officers, etc., "from proceeding further with the prosecution of said case in said State Court," is fully shown on pages 2-3 of Part II of said "Exhibit A," and the said transcript of record so filed is shown on pages 3-38 of Part II of said "Exhibit A."

INJUNCTION OF NOVEMBER 4, 1907.

EIGHTH: Without notice to said Real Estate Company, or its solicitor, and without notice to your petitioner, or his solicitor, and without the knowledge of any or either of them, an order was entered by said Circuit Court on November 4, 1907, on said petition or motion of that date, requiring your petitioner and his solicitor, A. B. Joyner, to appear before said Circuit Court on November 12, 1909, and show cause why a temporary injunction should not issue restraining your petitioner and said Joyner and their agents and representatives, and each of

them, from the further prosecution of said suit brought by your petitioner in said Superior Court, and further show cause why your petitioner and said Joyner "should not be directed to dismiss said suit so pending in said Superior Court," and further ordering "that until the hearing and disposition of said motion for an injunction said George F. Harding and said A. B. Joyner, and each of them, and their, and each of their agents and representatives be, and they and each of them hereby are jointly and severally restrained from proceeding further with the prosecution of, or taking any steps of any kind in said case of *George F. Harding* v. *The Standard Oil Company of New Jersey, Corn Products Refining Company, and others,* numbered 263,565 in the Superior Court of said Cook County; all until the further order of this court." Said order of November 4, 1907, is shown on pages 77-78 of Part II of said "Exhibit A."

NINTH: On November 12, 1907, your petitioner filed in the said Real Estate Company's suit his answer under oath to the said rule of November 4, 1907, together with the answer of said Joyner thereto. Said answer of your petitioner so filed on November 12, 1907, to said rule of November 4, 1907, is shown on pages 83-88 of Part II of said "Exhibit A," and said answer of said Joyner is shown on pages 88-89 thereof. SAID ANSWER OF YOUR PETITIONER TO SAID RULE OF NOVEMBER 4, 1907, stated as follows:

> "Now comes George F. Harding, *who is not a party to this case,* SPECIALLY APPEARING *only in obedience to the order of this court entered here-*

in on November 4, 1907, and shows cause * * * as follows, viz.:

* * * * * * *

"That * * * your respondent states that it is entirely untrue that said plaintiffs in said State Court and in this court have any common interest of any kind whatever in said stock described in said several bills * * *.

"Your respondent, further answering, says that he does not own and has not at any time for many years last past owned a single share of stock in said Chicago Real Estate Loan & Trust Company, nor has he been a president or officer or director therein, or connected with the management of said Chicago Real Estate Loan & Trust Company at any time for many years last past, and it is utterly false that he ever used the said Chicago Real Estate Loan & Trust Company as a cloak or shield for the concealment of his property or effects, or to defeat his wife or any other person, or to evade the payment of alimony or any other matter, or in any way or to any extent to secrete his property or belittle the amount of his effects, and it is not true that the various phases of said litigation appear in the printed reports of the decision of the Illinois courts and of the United States Supreme Court, and the case referred to in 198 U. S., 317, has no reference whatever, as appears upon its face, to the said subject matter of, or to the recovery of alimony or any other matter material in this case, and your respondent alleges that nothing in said litigation can be found which in any way reflects upon your respondent, and this ancient scandal, immaterial and indifferent in this case, is simply brought in because of the want of meritorious matter and in the endeavor to suppress the real truth and divert the court's attention from the real facts in this case.

* * * * * * *

"Your respondent further answering says that he had neither knowledge or notice of said motion or petition or of the said order herein obtained on November 4, 1907, until after said order was entered, and alleges that it was obtained without the knowledge of or any notice to respondent, the plaintiff in state bill, or by or to attorney for plaintiff, in either of said cases, and, as he believes without the knowledge of anyone, except said defendant in this case, and the attorneys representing said defendants.

"*Your respondent further states and alleges that this injunction was simply obtained to stop this plaintiff in said case in the Superior Court from attaching the defendants Morton, Glass and Calhoun, for contempt; and in order to protect them from punishment for failing to obey the subpoenas commanding them to testify to the truth concerning the matters involved in said state case.*

"That the said defendants were ordered to testify by said subpoenas, at 11 o'clock on November 4, 1907, and just before the said restraining order was obtained. That they were about to be proceeded against in said court of justice for their misconduct in refusing to testify and in thus evading the authority of the said state court, when this motion was secretly made and said injunction order was obtained forbidding the plaintiff in said case 'from proceeding further with the prosecution of or taking any steps of any kind in said case of George F. Harding against the Standard Oil Company of New Jersey, and others'; and so your respondent alleges the truth to be that the said petition and motion were made in this court wilfully, wrongfully, and secretly to prevent the state court from punishing the said defendants therein for contempt in refusing to appear and tell the truth, as witnesses in said cause.

"That said Moran, Mayer & Meyer obtained said order and injunction by fraud and concealment of the truth, viz: that no notice had been given, and of the other facts above stated, and that the prior and paramount jurisdiction was in the said state court, and that your respondent was simply proceeding to maintain the justice of the charges in said bill out of the mouth of the defendants themselves, and your respondent submits that this court had no jurisdiction or authority or power whatever over either this respondent, George F. Harding, or his said attorney, A. B. Joyner, or in any manner restrain the prosecution of said state case.

"Your respondent further answering denies any other allegation or fact set up, in said petition or motion, not elsewhere noticed in this answer, and charges that this whole proceeding is simply a fraud upon this court effected by its officers, said attorneys, by this false petition and concealing the fact that the court had no jurisdiction whatever in the premises, *and respondent alleges that it was improper that one who is not a party to the case before this court should be restrained from enforcing his own rights in the state courts.*

"And this defendant further answering says that said restraining order of November 4, 1907, was and is wholly void and of no effect, because of the entire lack of jurisdiction on the part of this Honorable court to enter the same. And this court has no authority or jurisdiction over this respondent in the premises, and no authority or jurisdiction to enjoin this respondent, or his said attorney, A. B. Joyner, from further prosecuting said suit in said state court, and no authority or jurisdiction to order this respondent, or said Joyner, to dismiss said suit, *and by this answer this defendant does not intend to submit himself to the jurisdiction of this court,*

in the premises, but denies the same. Further this respondent saith not.

"GEORGE F. HARDING, *Respondent.*"

TENTH: On November 12, 1907, Kenesaw Mountain Landis, District Judge, holding said Circuit Court, of his own motion, and in the course of his hearing of said rule to show cause entered on November 4, 1907, entered an order in said Real Estate Company's case, requiring your petitioner, and said Albert B. Joyner, and George F. Harding, Jr., and William J. Ammen, to show cause by 10 A. M., next day, "why they and each of them should not be attached for contempt of this court for violating the temporary stay and restraining order entered herein on June 8, 1907." Said order of November 12, 1907, is shown on page 90 of Part II of said "Exhibit A." No exhibit whatsoever was attached to or filed with said petition of November 4, 1907. The "contempt" of court committed in *alleged* "violation" of said restraining order of June 8, 1907, entered in said Real Estate Company's case, for which said rule to show cause was so entered, was the institution and prosecution of said suit of your petitioner by him and his alleged associates in said Superior Court, as hereinafter fully shown.

INJUNCTION OF DEC. 26 (UNDER DATE OF DEC. 13), 1907.

ELEVENTH: On November 13, 1907, in compliance with said rule of November 12, 1907, your petitioner and said Harding, Jr., and said Ammen and said Joyner, filed in said Real Estate Company's suit their respective sworn answers to said rule, al-

though neither of said respondents was ever a party to that suit; said answer filed by your petitioner on November 13, 1907, is shown on pages 91-96 of Part II of said "Exhibit A," and said answers of said Ammen and said Joyner and said Harding, Jr., are shown on pages 97-110 thereof. On December 26, 1907, under date of December 13, 1907, said District Judge Kenesaw Mountain Landis entered an order in the said Real Estate Company's suit, enjoining the further prosecution of your petitioner's said suit brought in the Superior Court. The proceedings before said District Judge, beginning on November 12, 1907, and ending on December 27, 1907, and resulting in the entry of the said decretal order of December 26, 1907 (then dated back to December 13, 1907, as determined by the Court of Appeals in its opinion shown on pp. 452-62 of Part II of said "Exhibit A"), are shown on pages 168-236 of Part II of said "Exhibit A," and SAID DECRETAL ORDER SO ENTERED, antedated to December 13, 1907, is shown on pages 112-114 thereof, the same being entitled in the said Real Estate Company's suit in said United States Circuit Court, and the same being as follows:

> "This day comes on to be heard the motion of the defendant, Corn Products Refining Company, entered of record herein November 4, 1907, for an injunction restraining the prosecution of the suit of *George F. Harding* v. *Standard Oil Company of New Jersey, Corn Products Refining Company et al.*, filed in the Superior Court of Cook County, Illinois, on or about October 19, 1907, and bearing General Number therein 263,565, and for an order to compel the dismissal of said last described suit; and there also now coming on to be heard the rule entered herein

on November 12, 1907, against George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, to show cause why they and each of them should not be attached for contempt of this court for violating the restraining order entered herein on June 8, 1907; and the court having heard and considered the answers to said rule, filed herein on November 13, 1907, by said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and having considered the petition of said Corn Products Refining Company, filed herein on November 4, 1907, and the exhibits thereto, and all the records and files herein, and all the oral evidence given by and statements of said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner in open court; and the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner being now present in open court, in person, and being also represented by said George F. Harding and William J. Ammen, as their solicitors; and the court having heard the arguments of Levy Mayer, Esq., solicitor for said petitioner, and of said solicitors for said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and being now fully advised in the premises:

"*The court finds that* BY THE INSTITUTION OF SAID SUIT OF *George F. Harding* v. *Standard Oil Company of New Jersey, et al., the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner have, and each of them has knowingly and wilfully violated the order of this court, entered herein on June 8, 1907, but the court of its own motion hereby discharges the said rule of November 12, 1907, for contempt, without the infliction of any punishment on any of the said respondents to said rule;* and

"THE COURT FURTHER FINDS THAT THE FURTHER PROSECUTION OF SAID SUIT OF *George F. Harding* v. *Standard Oil Company of New Jersey et al.*, AND THE INSTITUTION BY SAID GEORGE F. HARDING, GEORGE F. HARDING, JR., WILLIAM J. AMMEN AND A. B. JOYNER OF ANY ACTION LIKE OR SIMILAR TO THE PRESENT CAUSE SHOULD BE ENJOINED.

"*Wherefore, the premises considered, it is hereby* ORDERED, ADJUDGED AND DECREED *that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solicitors and representatives* BE, AND THEY HEREBY ARE, JOINTLY AND SEVERALLY RESTRAINED AND ENJOINED UNTIL FURTHER ORDER OF THIS COURT, FROM FURTHER PROSECUTING OR TAKING ANY STEPS OR PROCEEDINGS OF ANY KIND IN SAID CASE OF *George F. Harding* v. *Standard Oil Company of New Jersey, Corn Products Refining Company, et al., which was instituted in the Superior Court of Cook County, Illinois, on October 16, 1907, and was numbered therein 263,565,* AND WHICH CASE WAS SUBSEQUENTLY DOCKETED IN AND IS NOW PENDING IN THIS COURT AS CASE NUMBERED 28,865.

"It is hereby further ORDERED, ADJUDGED AND DECREED that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solicitors and representatives be, and they hereby are, jointly and severally restrained and enjoined, until the further order of this court, from in any manner whatsoever, either directly or indirectly, instituting or prosecuting, or causing or inspiring to be instituted or prosecuted, *in any court*, forum, place or jurisdiction whatsoever, any other suit, action or proceeding making charges and seeking relief like or similar to the charges contained and the relief sought in the case herein of *Chicago Real*

Estate Loan & Trust Company against said Corn Products Company et al.; but said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, jointly or severally, by an appropriate proceeding or petition, and upon a proper showing, may apply to this court for leave to intervene herein or become parties hereto; and,

"It is further hereby ordered that that part of said motion of said defendant, Corn Products Refining Company, seeking an order compelling the dismissal of said suit of *George F. Harding* v. *Standard Oil Company of New Jersey et al.*, be, and the same hereby is continued and reserved for the future consideration of this court, *and to this order and decree, and every part thereof, the said George F. Harding and A. B. Joyner, George F. Harding, Jr., and William J. Ammen jointly and severally object and except,* DENYING AND OBJECTING TO THE JURISDICTION OF THE COURT, and they, and each of them, are hereby granted thirty days from this date within which to present to this court a certificate of evidence to be signed and filed and made a part of the record herein.

COMPANY'S MOTIONS TO DISMISS ITS SUIT.

TWELFTH: Prior to the entry of said order on December 26, 1907, said Real Estate Company filed in its said suit in said Circuit Court its motion to dismiss its said suit, and presented the same to said District Judge, Kenesaw Mountain Landis, holding said Circuit Court, and the same was denied by said court prior to the entry of said last named order. Thereupon said Real Estate Company presented to said court four other motions to dismiss its said suit, in order, in different forms, and without waiving its said motion to dismiss already denied by

the court, as aforesaid, and all of the said motions to dismiss were denied by said court before its entry of said order last named. Said five motions to dismiss bill of complaint, numbered in order, together with the said orders denying same, are shown on pages 115-120 of Part II of said "Exhibit A." As hereafter shown, said Court of Appeals held that said motions to dismiss were seasonably presented, and ordered allowance of one or other of such motions.

PROCEEDINGS IN U. S. COURT OF APPEALS AND U. S. SUPREME COURT.

THIRTEENTH: From said order entered on December 26, 1907, under date of December 13, 1907, your petitioner, and said Harding, Jr., and said Ammen, and said Joyner, duly prosecuted an appeal to the United States Circuit Court of Appeals, Seventh Circuit; and, on January 19, 1909, an opinion was filed by said Court of Appeals in said appeal, which opinion is reported in Vol. 168 of Federal Reporter, page 658. And, on the same day, January 19, 1909, an order was entered by the said Court of Appeals (but the same was stayed as hereinafter shown) reversing said order so appealed from, and remanding said cause "to the said Circuit Court *with directions to dismiss the bill of the Real Estate Company in conformity with one or the other motions filed therefor,* AND THAT THE PETITION FOR AN INJUNCTION BE THEREUPON DISMISSED." Said opinion filed by said Court of Appeals on January 19, 1909, is shown on pages 452-462 of Part II of said "Exhibit A," and the said order by the said Court of

Appeals on the same date is shown on pages 462-463 thereof.

FOURTEENTH: Under the rules of said Court of Appeals said Corn Products Refining Company was allowed thirty days after the filing of said opinion within which to file its petition for rehearing in said cause; and on the 16th day of February, 1909, said appellee filed its petition for rehearing therein, and, on February 19, 1909, an order was entered therein by said Court of Appeals denying said petition for rehearing, and further ordering that the mandate therein "be stayed until the further order of this court." And, on March 15, 1909, said Court of Appeals entered an order in said cause further staying said mandate. Said order of February 19, 1909, denying petition for rehearing, and staying mandate is shown on page 463 of Part II of said "Exhibit A," and said order of March 15, 1909, is shown on page 465 thereof, the same being as follows:

> "Now this day come the parties by their counsel and the motion that mandate in this cause issue, now comes on to be heard on oral argument by Mr. William J. Ammen, counsel for appellants in support of said motion, and by Mr. Levy Mayer, counsel for appellee in opposition to said motion, and the appellants having agreed to accept one week's notice of the filing of a petition for writ of certiorari in the Supreme Court of the United States; It is now here ordered that the mandate in this cause be stayed until the further order of this court, on condition that the appellee herein file its petition for a writ of certiorari in the Supreme Court of the United States on or before March 29, 1909."

FIFTEENTH: On the 27th day of March, 1909, said Corn Products Refining Company filed in the Supreme Court of the United States its petition for writ of certiorari in said cause, together with its brief in support thereof; and, on the 2nd day of April, 1909, your petitioner filed in said Supreme Court his brief in reply to the said petition for certiorari, and your petitioner thereafter remained in or near the City of Washington awaiting the decision of said Supreme Court on said petition for certiorari, and said petition for certiorari was denied by said Supreme Court on the 12th day of April, 1909.

SIXTEENTH: On the 13th day of April, 1909, the said Corn Products Refining Company, by its said solicitor, Levy Mayer, filed in the said Court of Appeals, in said cause, its motion to modify said judgment of the said Court of Appeals, together with printed brief and argument of said Levy Mayer in support thereof, which said motion was argued and taken under advisement by said Court of Appeals on the 14th day of April, 1909, and the same was denied by the said Court of Appeals on the 21st day of April, 1909. A copy of said motion to modify said judgment, marked "Exhibit B," is hereto annexed.

SEVENTEENTH: On the 23rd day of June, 1909, the said Corn Products Refining Company, by Levy Mayer, as its solicitor, filed in the said cause pending in the said Court of Appeals, its motion to retax the costs therein, and on the same day said Court of Appeals took said motion under advisement and thereafter denied the same.

Eighteenth: On the next day after the entry of said injunction order of November 4, 1907, namely, on November 5, 1907, said Levy Mayer, as associate counsel with and in the name of James M. Sheean, a member of the firm of Calhoun, Lyford & Sheean, as solicitor for said Corn Products Manufacturing Company, in said suit brought by your petitioner, served a notice upon said A. B. Joyner, as solicitor therein for your petitioner, stating that on the following day, at 10 A. M., the petition of said Manufacturing Company praying a removal of said cause to said United States Circuit Court would be presented to Judge Ball, one of the Judges of said Superior Court. Said notice so served upon said Joyner, together with the affidavit thereto attached showing such service, is shown on pages 406-407 of Part II of said "Exhibit A."

Nineteenth: Pursuant to said notice of November 5, 1907, said Levy Mayer appeared before said Judge Ball in said Superior Court at the hour mentioned in said notice, and presented to said Judge, in open court, said petition for removal referred to in said notice, verified by one G. W. Powers, as president of said Corn Products Manufacturing Company, and having attached thereto the written consent of all other defendants to said suit, and their united statement of the truth of said removal petition, except as to said Standard Oil Company, which only consented to such removal, the same having been filed therewith on November 5, 1907, in said cause. *Said removal petition alleged that at the*

time of the commencement of said suit of your petitioner, "the said complainant, George F. Harding, was and continuously since has been a resident and citizen of the State of California, and a citizen of no other state or country." Said removal petition further alleged that the said Manufacturing Company, and said Corn Products Company, and said Refining Company, and said Standard Oil Company were at the time of the beginning of said suit and continuously thereafter, severally, corporations organized and existing under the laws of the State of New Jersey, and citizens thereof, having their principal offices in said state; and that the defendants, Mathiessen, Ream, Graham, Wemple and Herget, were not at the time of the filing of said bill of complaint, or thereafter, either directors or officers of any of the said defendant corporations. Said petition further alleged:

> "That said suit presents a controversy of a civil nature, in equity, wholly between citizens of different states, and also presents a separable controversy *between complainant* AND YOUR PETITIONER; and that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000)."

Said removal petition further stated that bond had been filed as required by law, and prayed that the same be approved and that an order be entered for removal of said cause to the said United States Circuit Court, and that no further proceedings be had therein in the State Court. Neither said petition nor said original or amended bill of complaint

or any other paper or record then or thereafter filed or entered or presented in or to said State Court contained any allegation or showing whatsoever as to the residence or citizenship of your petitioner, except as above shown, or any allegation or showing as to the residence or citizenship of any of the individuals made defendants to said bills, except as stated in said affidavit of Abner C. Harding, as above shown. Said removal petition, so verified, together with said written statements of other defendants attached to and filed with said removal petition in said State Court, is shown on pages 397-403 of Part II of said "Exhibit A," and said removal bond filed in said cause in said State Court, with said removal petition, on November 5, 1907, is shown on pages 404-405 thereof.

TWENTIETH: On November 6, 1907, said Standard Oil Company filed in said cause in said Superior Court its plea to the jurisdiction of that court, verified by one John P. Archbold, as shown on pages 407-410 of Part II of said "Exhibit A."

STATE COURT CONTEMPTUOUSLY IGNORED.

TWENTY-FIRST: Upon the said removal papers being so presented to said Judge Ball by said Levy Mayer, your petitioner stated to said Judge that he, your petitioner, desired to be heard in opposition to such removal; and, thereupon, said Judge announced from the bench that he could not then hear or consider the same, but that the same would be heard and considered by him at the opening of said Superior Court on the morning of November 7, 1907,

to which action and announcement no objection whatsoever was taken or suggested by said Levy Mayer, or by any of the parties or solicitors in said cause. Without notice, however, and without further appearance in said Superior Court, and without further action upon the part of that court, the said Levy Mayer appeared on the same date, November 6, 1907, before said Kenesaw Mountain Landis, District Judge, then holding said United States Circuit Court, and obtained from said Judge the entry of an order granting leave to said Corn Products Manufacturing Company to file therein, and ordering filed therein a transcript of the record of said Superior Court in said cause, and staying further proceedings therein in said State Court, and enjoining your petitioner, his agents, representatives, counsel, solicitors and attorneys from proceeding further with the prosecution of said cause in said State Court, all until the further order of said United States Circuit Court, all of which was wholly without notice to and without knowledge of your petitioner or his solicitor in said cause. Said order is shown on page 411 of Part II of said "Exhibit A."

TWENTY-SECOND: The files and records of said Superior Court embraced in said transcript so filed in said United States Circuit Court on Nov. 6, 1907, are fully shown on pages 311-410 of Part II of said "Exhibit A."

HEARING OF MOTION TO REMAND REFUSED.

TWENTY-THIRD: Your petitioner had no knowledge or notice or information of the entry of said order of November 6, 1907, or of the filing of said transcript of record in said United States Circuit Court on that date, until on or about November 12, 1907; and, prior to December 13, 1907, your petitioner applied to said District Judge Kenesaw Mountain Landis, in chambers, and inquired of said Judge if he would hear a motion of your petitioner to remand your petitioner's said suit to the State Court, and was informed by said Judge that he, said Judge, did not deem it proper to hear such a motion to remand "until the court had disposed of the said motion for an injunction, which the court then had under advisement." By reason thereof, and by reason of said injunction order entered on November 4, 1907, your petitioner did not immediately file and present a formal motion to remand his said suit to said State Court. On December 13, 1907, said Judge Landis orally announced his decision in relation to the matter of the said injunction and to the matter of said alleged contempt. The entire certificate of evidence, signed by said Judge Landis and filed in said Real Estate Company suit, in relation to said proceedings of November and December, 1907, is shown on pages 168-414 of Part II of said "Exhibit A." That portion showing said oral opinion or announcement of December 13, 1907, and the proceedings immediately following the delivery thereof, including said refusal of said court to hear your petitioner's

motion to remand, is shown on pages 213-218 of Part II of said "Exhibit A."

TWENTY-FOURTH: On December 23, 1907, your petitioner filed in the office of the clerk of the said United States Circuit Court, in your petitioner's said suit, his motion in writing to remand said cause to said Superior Court, which motion to remand is shown on pages 237-240 of Part II of said "Exhibit A." SAID MOTION TO REMAND (omitting title) reads as follows:

MOTION TO REMAND, FILED DECEMBER 23, 1907.

"Now this day comes George F. Harding, complainant in the above entitled cause, *and appearing specially for the purposes of this motion only, saving and reserving any and all objections which he has to the manifold imperfections in the mode, manner and method of the removal papers,* AND EXPRESSLY DENYING THAT THIS COURT HAS JURISDICTION OF SAID CAUSE, OR OF SAID COMPLAINANT HEREIN, respectfully moves the court to remand said cause to the Superior Court of Cook County, Illinois, from whence it was removed for the following reasons, namely:

"1. That this cause does not present a controversy of a civil nature wholly between citizens of different states, nor does said suit present a separable controversy *between said complainant and said petitioner therein*, and as improperly alleged in said petition and that *no such controversy exists as therein alleged.*

"2. *That said Superior Court of Cook County, Illinois, never was and is not authorized to surrender jurisdiction of said cause and that said Circuit Court of the United States never was and is not authorized or entitled to take jurisdiction of said cause.*

"3. Because it is not properly shown by said

petition for removal or by the record, in said cause, in legal language and form as required in such pleading, that the parties to said cause were citizens of different states either at the time of the commencement of said suit or at the time of presenting said petition for removal to said Superior Court, or at the time of the filing of said petition therein.

"4. Because it is not shown by the record herein, or by said petition, of what state or states said defendants, respectively, were residents of at the time of the commencement of said suit and at the time when said petition for removal was presented to said Superior Court, or filed therein.

"5. Because the complainant in said cause was, at the time of the commencement of said suit and at the time of the presenting of said petition for removal therein to said Superior Court, and of the filing of the same therein, a citizen of the State of California, and a citizen of no other state, and at the times aforesaid was not a resident of the aforesaid district; and Charles L. Glass, Joy Morton, William J. Calhoun and H. G. Herget, defendants in said cause, were, respectively, at the times aforesaid, citizens and residents of the said State of Illinois, and the other defendants, respectively, were not, at the times aforesaid, citizens of said State of Illinois, or residents of said district, but were, at said times, citizens of states other than said State of Illinois, and not residents, respectively, of said district.

"6. Because said petition for removal fails to allege, in manner and form as required by law, what is, or was, the alleged separable controversy between said complainant and the said petitioner in said cause, and because the said allegation therein that a separable controversy existed therein between said petitioner and said complainant were and are untrue.

"7. And, because the Standard Oil Company, of New Jersey, one of the defendants in said cause, did not unite and join in said petition for removal and because of other imperfections, errors and insufficiencies in said petition for removal and proceedings thereunder and of other matters shown by the record in said cause.

"8. Because said order of removal is unlawful and should be set aside, in that it improperly and unlawfully enjoins said complainant from prosecuting said suit in said Superior Court of Cook County.

"Wherefore complainant respectfully moves that said cause be remanded to said Superior Court of Cook County, Illinois.

"GEORGE F. HARDING,
"Complainant in said cause."

GEORGE F. HARDING,
Of Counsel.

TWENTY-FIFTH: On December 25, 1907, there was served upon the solicitors for defendants in said cause a notice signed by your petitioner stating that on December 26, 1907, at 10 A. M., your petitioner (appearing specially for such purpose, only), would present to the said United States Circuit Court his said motion to remand said cause to said State Court and move that said motion be granted by the court. Said notice is shown on page 237 of Part II of said "Exhibit A."

HEARING OF MOTION TO REMAND AGAIN REFUSED.

TWENTY-SIXTH: Your petitioner here quotes from the said proceedings in said Circuit Court in December, 1907, as shown on pages 216-237 of Part II of said "Exhibit A," *for the purpose of showing the*

FURTHER *efforts of your petitioner to have said motion to remand heard.*

(1) Immediately following said oral announcement or opinion of said Judge Landis, *on December 13, 1907,* the following occurred, as shown on pages 216-218:

> "Mr. Mayer: In a similar case before Judge Kohlsaat there was a prayer of dismissal.
>
> "The Court: I have disposed of this matter. This extends now to that as a disposal and some order should be entered here.
>
> "Mr. Ammen: The second suit had been renewed [removed] after this motion was made.
>
> "The Court: The order of dismissal in the second suit?
>
> "Mr. Mayer: It is covered by the order.
>
> "The Court: I have intimated that this settles the case for the time being as to both suits; the order stands as to the second suit under like circumstances; I want to consider the question a little bit further before I enter the order. That may be taken up upon motion.
>
> "Mr. Ammen: The order which is to be entered now will be in the first suit.
>
> "Mr. Mayer: The order we will offer will be an order in the first suit perpetually enjoining the second suit.
>
> "The Court: I think it ought to be in the first suit.
>
> "Mr. Ammen: Will a copy of it be sent me?
>
> "The Court: Yes, of course.
>
> "Mr. Harding: If your Honor please, the motion to remand, I desire to call your Honor's attention to the fact that we wish to argue and present this question at your earliest convenience.
>
> "The Court: This disposes of that question.
>
> "Mr. Harding: Without argument? I mean the question of remanding.

"The Court: I shall, of course, dispose of the question on which the court heard arguments at the last hearing till something is done under the order restraining the further prosecution of the suit, disposes of the motion to remand. In other words, the motion to remand is not in order now in view of what the court has done in this litigation.

"Mr. Harding: We will study on that. In the meantime, we want to make a motion to remand and ask your Honor to hear it.

"The Court: We will come to that *after this order has been entered,* unless it is modified, it will not permit the consideration of the motion which counsel now indicates.

"Mr. Ammen: It is an endeavor to preserve the rights of the parties in the other case.

"The Court: The order can be drawn. And you can communicate with your adversaries in regard to it.

"Mr. Ammen: When will this be done?

"Mr. Mayer: I am going to New York this afternoon and will be there through next week, will be away seven or eight days.

"Mr. Harding: If your Honor please, we think this is an attempt on the part of the defendants to prevent this case being heard. We are, therefore, against all forms of further delay. We are going to seek a trial of this case as soon as possible; there is a great deal of money involved.

"The Court: What will seven or eight days amount to in an important matter in connection with a litigation of this kind? *This order for injunction will be presented by counsel a week from next Monday,* and counsel for the complainant and defendant will then be present at half past two.

"Mr. Mayer: Without any notice?

"The Court: Without any notice.

"Mr. Harding: Now, will that prevent us from going ahead with our motions?

"The Court: When the order is entered, you understand, there will be plenty of time to proceed with your motion, so long as this order stands.

"Mr. Ammen: We would like first to see the order, to have a copy of it before we come in here.

"The Court: Oh, certainly; it will be furnished you a week from Monday by your adversaries. You can come in the afternoon.

"The court further certifies, at the request of George F. Harding, Sr., and William J. Ammen, that after it had entered [announced] in said first suit the said order [opinion] of injunction on December 13, 1907, the said George F. Harding, Sr., brought to the attention of this court said contemplated motion to remand in language as follows:

"'Mr. Harding: If your Honor please, the motion to remand, I desire to call your Honor's attention to the fact that we wish to argue and present this question at your earliest convenience.'

"Upon which the court ruled that the motion to remand was not then in order in view of what this court had done in this litigation, viz.: the entering of said injunction. To which said Harding replied:

"'We will study on that. In the meantime we want to make a motion to remand and ask your Honor to hear it.'

"Adjourned to 2:30 P. M. Monday, December 23, 1907.

"And afterwards, namely, on December 23, 1907, at the hour of 2 o'clock P. M., again came the same parties, and thereupon the following proceedings were had:

"Mr. Ammen: If the court please, Mr. Mayer had drafted an order to be entered in the

case, but did not furnish us with a copy of the same until 12:30 today, and I would like to have two or three days in which to furnish to him our draft of the order as we think it ought to be entered, if entered according to your Honor's opinion, and we object to the order as prepared by Mr. Mayer.

"It was thereupon agreed that Mr. Ammen would furnish to Mr. Mayer such draft of order on or before December 25, 1907, and that the parties should appear before the court again at 10 A. M. on Thursday, December 26, 1907, with the view of having the terms of the order to be entered then settled by the court.

"And afterwards, namely, on *December 26, 1907,* at the hour of 10 o'clock A. M., again came the said parties by their said solicitors, and thereupon proceedings were had in said cause as follows:

"Mr. Ammen: If the court please, I have here a motion to dismiss the suit.

"(Said motion is hereby referred to and made a part of this certificate of evidence.)

"Mr. Mayer: I don't think this motion to dismiss the suit is going to supplant what your honor has set for hearing this morning?

"The Court: What is that motion?

"Mr. Ammen: This is bringing up the motion that was filed October 1st.

"The Court: That motion is denied, and complainant excepts.

"Mr. Ammen: I have numbered that motion Number 1. I have here a series of four others, numbered, respectively, 2, 3, 4 and 5, which I desire to present in order. I have authorities here in support of these motions.

"The Court: No, make your motions; I will rule on the motions. I can take care of the motions in one minute."

* * * * * * * *

(2) And, on December 26, 1907, in connection with the settlement of the terms of the order *then* entered (under date of December 13, 1907), the following occurred, as shown on pages 226-227:

> "Mr. Harding: *The motion to remand in the second case has been filed.* You say it is substantially determined by your ruling in the other. *That record don't contain any hearing on that point.* If your Honor will kindly make an order upon that. We cannot get out of this court until we get that refusal to remand.
>
> "The Court: The order restraining the prosecution of the second suit is of the 13th of December. I will allow the record to show these motions to dismiss the first suit made today. I will not allow the affidavit to be filed. You may save your point on that. I think it is unseasonable, it is entirely out of place now."

(3) And, on the same date, namely, December 26, 1907, the following occurred, as shown on pages 230-232:

> "Mr. Harding: Your Honor will also pass upon the other motion, the motion to remand in the other case, of record.
>
> "The Court: The second case stands in whatever situation this order finds it.
>
> "Mr. Harding: We offered a motion to remand and filed it. We want that motion simply passed upon by your Honor.
>
> "The Court: *The order of the court in the first case restrains the parties from proceeding in any other case with this litigation; holds the first case in this court, until this order of injunction is reversed, in whatever posture the order finds the record in the first case. I don't care to go on and enter any other orders in the second case, on motion to remand, or any motions in the second case.*

"Mr. Harding: We want an order overruling it. We have filed the motion. We cannot take anything up. The cases are independent upon this record, except in the opinion of your Honor. We moved to remand long before the entry of this order, and now we only want an order upon that motion; if you say it is too late, or whatever you are pleased to say.

"The Court: Did you ask me to remand before this court came—

"Mr. Harding: During the hearing.

"The Court: While this matter was being heard—this motion in the first case was being heard?

"Mr. Ammen: Yes, in this respect, I remember this one thing that occurred. We asked your Honor if we could give notice—

"The Court: Afterwards.

"Mr. Ammen: That was pending this hearing.

"The Court: You came here after the matter had been submitted to the court on this application.

"Mr. Ammen: Yes, before the decision.

"The Court: *Yes, now the view of the court in this matter is this, as I have indicated four or five times. The view of the court is that this order restraining the parties from going on with the first case applies to the parties here and in the state court and anywhere, going on in the second case.*

"Mr. Ammen: *In our draft of the order we asked that this be without prejudice to the motion to remand.*

"The Court: *I won't enter that order.*

"Mr. Ammen: I merely want to call the court's attention to that. *After they got this injunction from Judge Kohlsaat and ruled us to show cause why this second suit should not be restrained, they removed the second case to this court.* Now the view of your Honor is that

although they took that step *after they got that restraining order, we must leave it there.* Are we not liable to be thus prejudiced in that suit?

"The Court: Not if you read the order of injunction. The motion to take up these other matters may come along when this motion, when this order which the court has entered has been modified under an order of the court authorized to give instructions to this court.

"Mr. Harding: Then we are locked up entirely until there is a hearing. Can't we move to dismiss in the first case?

"Mr. Mayer: That has been overruled.

"Mr. Ammen: Will this order state that we have objected and excepted to the terms of this present order just entered?

"The Court: The record will show that.

"Mr. Harding: It will show our several motions to dismiss.

"The Court: You have made several motions.

"Said several motions to dismiss filed herein are hereby referred to and made a part of this certificate of evidence.

"Mr. Harding: And the motion to remand?

"The Court: I HAVE SAID AT LEAST A HALF DOZEN TIMES THAT THAT MOTION TO REMAND I WOULD NOT HEAR. THIS ORDER ENJOINING THE PARTIES IN THE FIRST SUIT FROM PROSECUTING THE SECOND SUIT OR GOING ON WITH THE SECOND SUIT COVERS A MOTION TO REMAND AS PLAINLY AS IT COVERS ANY OTHER SORT OF A MOTION IN THE SECOND CASE. DO YOU UNDERSTAND THAT PROPOSITION?

"Mr. Harding: *But who understands that in* THAT *record? If we take up the second case, the motion to remand is found there. There is no order made upon it and no order made in that case at all. Isn't it a very easy thing for your Honor to say that you have already overruled it, if—*

"The Court: My view of this situation is such that I don't think you have a right to be going

on with these two suits at once, in the Federal Court and State Court, or anywhere else.

* * * * * * * *

"Mr. Mayer: The order which you have just entered is in the first suit. The motion to remand which was long since overruled—

"Mr. Ammen: It is in the second suit.

"Mr. Mayer: *This present order is in the first suit* AND SHOULD BE ENTERED AS OF DECEMBER 13TH. There is no motion to remand pending in the first suit; that has been overruled long ago. The motion to remand in the second suit is here on file. You are not disposing of that motion, you are entering no order in the second suit.

"The Court: I AM ENTERING AN ORDER IN THE FIRST SUIT, THAT THERE SHALL NOT BE EVEN A MOTION TO TAKE UP THE MOTION TO REMAND.

"Mr. Harding: *That is all right. I would only want your Honor to say so,* OTHERWISE MR. MAYER WILL SAY THERE WAS NO ORDER.

"Mr. Mayer: Well, I have been through practical experience with these gentlemen before, and you follow this case as it proceeds and see if I am right.

"Mr. Ammen: All we want is to make sure that your Honor states in the order specifically what you hold.

"The Court: I will do whatever Judge before whom it comes up the justice to assume that he will understand.

"Mr. Harding: This order says nothing about the motion to remand.

"Mr. Mayer: THIS PRESENT ORDER IS ENTERED AS OF DECEMBER 13TH, MR. CLERK.

"THE COURT: DECEMBER 13TH.

"And thereupon said respondents, severally, objected and excepted to the respective findings of the court in the said order last above referred to, and to the entry of the said order, and the respective portions thereof, and the action of

the court in entering the same, or directing the entry thereof, *and, particularly, to the action of the court in directing the entry thereof to be made* AS OF *December 13, 1907.*"

"SUPPLEMENT" TO REMOVAL PETITION.

TWENTY-SEVENTH: On November 6, 1907, there was filed in the office of the Clerk of said United States Circuit Court, in the said suit brought by your petitioner, without leave of court, and without notice to or consent of your petitioner, a certain so-called "supplement" to said removal petition therein, setting forth the citizenship of the individuals made defendants to your petitioner's said bill of complaint. Said so-called "supplement," together with the affidavit of G. W. Powers attached thereto and filed therewith, is shown on pages 412-414 of Part II of said "Exhibit A." (On June 30, 1909, by motion stated in his petition dated June 29, 1909, and hereinafter shown, your petitioner moved to strike said "supplement" from the files.) Your petitioner here quotes from said so-called supplement as follows:

"Now comes said Corn Products Manufacturing Company and submits the following *in support of and in conjunction with and supplemental to the petition originally filed by your petitioner in the Superior Court of Cook County, Illinois, on the application to remove said cause to this court,* and which petition is a part of the transcript of the record filed herein:

"Your petitioner says that * * * Charles L. Glass, William J. Calhoun, Joy Morton and T. B. Wagner, defendants in said suit, were at the time of the commencement of said suit and continuously since have been and still

are, respectively, *citizens of the State of Illinois, and residents of the City of Chicago* in said Eastern Division of said Northern District of Illinois; that H. G. Herget, defendant in said suit, was at the time of the commencement of said suit, and continuously since has been and still is *a citizen of the State of Illinois*, and a resident of Pekin, in said State of Illinois."

TWENTY-EIGHTH: On April 15, 1909, while said motion to modify said judgment of the United States Circuit Court of Appeals was still held under advisement by that court, and while your petitioner was still in the east awaiting information with reference to the decision of the Supreme Court of the United States in the said proceedings for *certiorari*, and to procure a certified copy of the order showing such decision, a notice entitled in the said suit of your petitioner in the said Circuit Court, and addressed to your petitioner and William J. Ammen, was served on said Ammen; but the same was never served upon your petitioner, who alone had theretofore appeared in the said Circuit Court in the said suit brought by your petitioner, and who alone was then the attorney or solicitor of record for complainant therein, *and the only appearance theretofore entered by your petitioner therein was in and by his said motion to remand said cause as above set forth.* Said notice so served on said Ammen on April 15, 1909 (omitting title of cause) read as follows:

"To George F. Harding and William J. Ammen, Solicitors for Complainant:

"Take notice that on Friday, April 16, 1909, at 10 o'clock a. m., or as soon thereafter as the

matter can be heard, we shall present to the Honorable K. M. Landis, in the court room usually occupied by him, *a motion for leave to amend the petition for removal* of the Corn Products Manufacturing Company which appears in and is part of the transcript filed herein on November 6th, 1907.

"A copy of the motion of said Corn Products Manufacturing Company, and of the affidavits of Levy Mayer and of Harlen H. Parmenter, is herewith served on you.

"CALHOUN, LYFORD & SHEEHAN,
"*Solicitors for Corn Products*
"*Manufacturing Company.*

"LEVY MAYER
"*of Counsel.*"

PETITION, APRIL 16, 1909, FOR LEAVE TO AMEND REMOVAL PETITION OF NOVEMBER 5, 1907.

TWENTY-NINTH: Pursuant to said notice, the said Levy Mayer, whose name was signed to said notice, as counsel for said Corn Products Manufacturing Company, and said Ammen, appeared before said District Judge, Kenesaw Mountain Landis, on April 16, 1909, and thereupon said Mayer presented to said United States Circuit Court, before said Judge, *the petition of said Corn Products Manufacturing Company,* verified (on information only), by one Fisher, as president of that company, praying for leave to amend the said removal petition theretofore filed by said Manufacturing Company in the said Superior Court, together with the written consent of the other defendants to your petitioner's said bill of complaint thereto attached, and the affidavits of said Mayer, and one Parmenter, thereto attached. A copy of said petition so presented on April 16, 1909, to-

gether with said consents and affidavits thereto attached, marked "Exhibit C," is hereto annexed. Said petition prayed leave to amend said original removal petition *by striking therefrom* its averment that said George F. Harding was, on October 19, 1907, and thereafter, a *citizen and resident* OF CALIFORNIA, *and inserting therein,* IN LIEU OF SAID AVERMENT SO STRICKEN OUT, an averment that said Harding was, on October 19, 1907, and thereafter, a *citizen* and *resident* OF CHICAGO, ILLINOIS.

THIRTIETH: A true and complete copy of the shorthand reporter's transcript of the proceedings before said Judge Landis, on April 16, 1909, in said cause, marked "Exhibit D," is hereto annexed.

THIRTY-FIRST: A true and complete copy of the special appearance filed by said Ammen in said cause on April 16, 1909, marked "Exhibit E," is hereto annexed. The changes therein in ink were made by said Judge Landis after the filing of the same as shown in said "Exhibit D."

LEAVE GIVEN TO FILE PETITION TO AMEND.

THIRTY-SECOND: Against the objections and protests of said Ammen, appearing specially for your petitioner, as aforesaid, said District Judge thereupon entered an order, on April 16, 1909, on motion of said Mayer, granting leave to said Corn Products Manufacturing Company to file in said cause its said petition for leave to amend said original removal petition, together with the said consent papers and affidavits thereto attached, and thereupon the same was filed by said Mayer in said cause on April 16,

1909. A copy of said order of April 16, 1909, granting such leave, marked "Exhibit F," is hereto annexed. Your petitioner here quotes therefrom as follows:

> "Now comes on to be heard the motion * * * for leave to amend * * * the petition for removal in said cause * * * and the said George F. Harding appears by William J. Ammen, his solicitor, *who, however, protests that he appears specially only for the purpose of this motion,* AS STATED IN HIS WRITTEN APPEARANCE THIS DAY FILED HEREIN.
>
> "Whereupon counsel for said Corn Products Manufacturing Company *press* said motion *for disposition,* and said Ammen * * * *objects to the hearing* of said motion *at this time* BECAUSE OF THE ABSENCE *of said Harding;* thereupon, *in consideration of the stipulation hereinafter referred* to, *entered into by said Ammen,* in open court, IN ORDER TO AVOID THE OBJECTION TO SAID CONTINUANCE, *the hearing of said motion to amend is hereby continued* * * * until Friday, April 23, 1909, at 10 A. M. * * *"

STIPULATION EXACTED.

THIRTY-THIRD: As already shown by this petition and its exhibits, said Ammen was required by the said District Judge on April 16, 1909, as a condition of one week's postponement of the hearing of said petition for leave to amend, to stipulate as solicitor for your petitioner and others, as shown by said order of April 16, 1909, that no steps whatsoever should be taken by your petitioner, or others, in said appeal then still pending in said Court of Appeals, or in the said suit brought by your petitioner, or in said Real Estate Company's suit, until after

the hearing and decision *of record* of said petition of said Corn Products Company for leave to amend its original removal petition, your petitioner being thus prevented and debarred from moving for the issue of the mandate of the said United States Circuit Court of Appeals, in said cause pending in that Court, and also from bringing on for hearing in said Circuit Court his said motion to remand filed on December 23, 1907, and from any other action therein.

CHANGE OF VENUE TO JUDGE SELECTED BY JUDGE LANDIS.

THIRTY-FOURTH: On April 23, 1909, said Judge Landis, in open court, orally directed that the further hearing of said motion for leave to amend said removal petition in said cause be had before the Honorable Arthur L. Sanborn, District Judge of the United States District Court in and for the Western District of Wisconsin. Whereupon, the hearing of said petition for leave to amend said removal petition began before said Judge Sanborn, and such hearing continued from time to time, and after the hearing of proofs and arguments therein, the same was taken under advisement by said Judge Sanborn on the 4th day of May, 1909, and his opinion on said petition for leave to amend was filed in said cause on May 15, 1909, and an order was entered therein by him, dated May 15, 1909, pursuant to said opinion, as hereinafter more fully shown.

OBJECTIONS AND ANSWER TO PETITION FOR AMENDMENT.

THIRTY-FIFTH: In the course of said hearing of said petition for leave to amend said original removal petition, said Judge Sanborn, on the 1st day of May, 1909, granted leave to your petitioner to file in said cause his objections and answer to said petition for leave to amend, and pursuant thereto the same was filed by your petitioner in said cause on May 1, 1909, and the same appears on pages 10-25 of Part I of said "Exhibit A."

Your petitioner here quotes the first paragraph of his said "OBJECTIONS AND ANSWER TO THE PETITION OR MOTION OF THE CORN PRODUCTS MANUFACTURING COMPANY, FILED ON APRIL 16, 1909, FOR LEAVE TO AMEND THE REMOVAL PETITION IN SAID CAUSE," AS FOLLOWS:

> "Your complainant, George F. Harding, *appearing herein specially and for the purpose only of objection to the jurisdiction of the court in this cause as stated in his motion filed herein on December 23, 1907, to remand said cause,* AND OBJECTING AND INSISTING THAT THIS COURT HAS NO JURISDICTION OF THIS CAUSE, or over this complainant, AND HAS NO POWER OR AUTHORITY OR JURISDICTION TO ALLOW OR EVEN ENTERTAIN THE SAID MOTION OR PETITION FOR LEAVE TO AMEND, *and without consenting to the removal of this cause to this court,* AND STILL INSISTING UPON HIS MOTION TO REMAND THE SAME, your complainant by way of *further* answer and objection to the said parties [petition] for leave to amend, shows unto your Honor, the Honorable Kenesaw M. Landis, and represents, as follows:"

Following the above quoted paragraph of said "Objections and Answer," your petitioner therein referred, *in support of such objections,* to the files and records in said Real Estate Company's suit, and to the proceedings in the said appeal prosecuted to the said Court of Appeals, as shown by the said printed record filed in said proceedings for *certiorari* in the United States Supreme Court, including the petition of said Mayer for rehearing, and denial thereof, and the stay of mandate in said appeal, at the instance of said Mayer, to the end that he might apply for such *certiorari,* and said petition for *certiorari,* and your petitioner's reply thereto, and denial thereof by said Supreme Court on April 12, 1909, *and to the terms of said decretal order of December 26, 1907, so appealed from,* STILL REMAINING IN FULL FORCE AND EFFECT BY REASON OF SUCH STAY OF MANDATE, *and thus forbade and enjoined said motion to amend removal petition, and all other action in your petitioner's said suit,* UNTIL SUCH MANDATE COULD BE FIRST ISSUED AND OBEYED; *and that* UNTIL THEN *the said Circuit Court was wholly* WITHOUT POWER OR JURISDICTION IN THE PREMISES, ALL OF WHICH FILES AND RECORDS *so referred to in said "Objections and Answer"* WERE MADE EXHIBITS THERETO; and it was further alleged therein that "THIS COURT IS WITHOUT POWER OR JURISDICTION TO ALLOW OR HEAR THE SAID PETITION FOR LEAVE TO AMEND, and the same should therefore be stricken from the files, dismissed, and not allowed by the court," upon the several grounds stated therein. Said "Objections and Answer" further alleged that your petitioner immediately after denial of said petition for *certiorari,* on

April 12, 1909, moved the said Court of Appeals for issue of mandate to said Circuit Court, and that said motion for mandate was resisted by said Mayer, and his associates, "under color of an application for modification of the opinion or order of said Court of Appeals," with a printed brief in support thereof, *and that said motion for mandate and said motion to modify were both under advisement before the said Court of Appeals,* and *said mandate still stayed,* WHEN SAID PETITION FOR LEAVE TO AMEND SAID REMOVAL PETITION WAS PRESENTED AND FILED ON APRIL *16, 1909.*

Thereupon said "Objections and Answer" proceeded as follows:

> "6. *Your complainant further shows that it was thus, while all action was stopped in the Circuit Court and in the said Court of Appeals by the said Mayer and his associates, and the issue of the said mandate thus delayed,* IT WAS IN THIS SITUATION, *that counsel for your complainant,* WAS REQUIRED *on April 16, 1909,* BY ORDER OF THIS COURT, *to stipulate of record herein not to take any step in this court, or elsewhere,* in this case, or in said case No. 28695, *until the hearing and decision of this said petition for leave to amend,* NOTWITHSTANDING THE PENDENCY OF THE SAID APPEAL, WITH SAID INJUNCTION OF DECEMBER, 1907, STILL IN FULL FORCE AND EFFECT AGAINST YOUR COMPLAINANT; *and your complainant insists that this attempt to amend,* made in this position, and leave now asked to make such amendment, *notwithstanding the fact that no mandate has yet been issued, or ordered by the said Court of Appeals,* AND WHILE YOUR COMPLAINANT WAS AND STILL IS ENJOINED FROM ANY PROCEEDINGS *in either of the said suits,* except applying to intervene, as aforesaid, and becoming a party to the said dead case of the said

Real Estate Company, *is improper and grossly unfair and should be prevented and denied by the court.*

"7. *It was while this state of the case continued that this petition for leave to amend was presented herein,* AND IN THE ABSENCE OF YOUR COMPLAINANT, a citizen and resident of the State of California, *and while he was absent from the State of Illinois,* AND WITHOUT COUNSEL OF RECORD IN THIS CAUSE OTHER THAN HIMSELF, *and your complainant having never appeared in the case except by his motion to remand,* and only appeared in the state court by the filing of his bill therein, and the issue of process for service upon the defendants, and the issue of subpoenas to compel the defendants themselves to testify as to the matters and charges in this bill; *and it was while your complainant was actually before the Notary Public, awaiting the attendance of the defendants, and especially those of them who had been subpoenaed as witnesses by your complainant,* IT WAS AT THAT VERY TIME THAT SAID PETITION OF NOVEMBER 4, 1907, WAS PRESENTED IN THIS COURT, SECRETLY AND WITHOUT NOTICE, AND YOUR COMPLAINANT WAS THEN RESTRAINED WITHOUT NOTICE, AND HAS EVER SINCE BEEN RESTRAINED, FROM FURTHER PROCEEDINGS IN THIS CAUSE, *as shown by the said order of November* 4, 1907, *and the said injunction order of December,* 1907, *to all of which reference is hereby made.*

"8. Your complainant further shows that while this was the state of the case in this court, and in said Court of Appeals, and while no action could or should have been had, as above set forth, this attempt to amend the said removal petition has been made in the absence of your complainant, and your complainant charges that such attempt was and is a deliberate and wilful and fraudulent attempt to obtain an undue ad-

vantage by the entry of the order prayed for in the said petition for leave to amend.

"9. *Your complainant further shows that the removal of this cause from the state court was secretly obtained, in defiance and contempt of the law, and of the state court, and without right;* and your complainant did not even learn of such removal to this court until long afterwards, namely, after November 12, 1907, or on that date, upon the hearing pursuant to which the said order of December, 1907, was entered by this court; *and when your complainant first learned of said removal he had already been enjoined and restrained from taking any action in this case by said order of November 4, 1907, obtained secretly and without notice, as above set forth;* and promptly after learning of said removal, your complainant applied to Your Honor, and repeatedly so applied, to hear your complainant's motion to remand this cause to the state court, as shown by said printed transcript of record, to which reference is hereby made, *and your complainant shows that he had a right to have the said motion to remand heard promptly, upon the record as it* THEN *stood in this cause, and without this desired or proposed amendment to said removal petition;* and your complainant shows that *after repeated applications to Your Honor to hear, or fix a time for hearing his said motion to remand this cause,* he filed herein, on December 23, 1907, his full and careful written motion to remand the same, to which reference is hereby made, showing therein that there was *no jurisdiction or power* in this court to make such order of removal, and that such order ought not to have been entered, and pointing out why, and showing that it was forbidden by the Act of Congress, as construed by the U. S. Supreme Court in the case of *Ex parte Wisner,* 203 U. S., 449. The said motion to re-

mand hereby referred to is shown on pages 238-40, of said printed transcript of record."

Said "Objections and Answer" thereupon set forth, in detail, the efforts of your petitioner in December, 1907, to obtain a hearing before said Judge Landis of his motion to remand said cause to the state court, quoting, for that purpose, at length, from the certificate of evidence signed by said Judge Landis, as shown on pages 216-37 of Part II of said "Exhibit A," and as already shown in paragraph numbered twenty-six in this Petition. Your petitioner further quotes from said "Objections and Answer," as follows:

> "13. Your complainant further alleges that the truth is as stated in said bill as to the residence of said complainant, and it was untrue that he was, as alleged in said petition, and affidavit, namely: that he was not a citizen or resident of the State of Illinois on October 19, 1907, when this bill was filed in this cause; but the contrary is shown by the affidavits of Colonel Joseph H. Strong, and Doctor DeVeny, and others, all old neighbors and associates of your complainant when your complainant resided in Illinois and men of the highest character, and most fully informed in relation to the matters mentioned in said affidavits, and also by the affidavits of A. C. Snyder, Addie C. Harding, Anna M. Burson, Frieda Hartman, Ellen Harding, E. Sanders, John L. Zweck, Abner C. Harding, George F. Harding, Jr., Charles B. McCoy, Gregory T. Van Meter, Albert B. Joyner, Ada E. White, and William J. Ammen, all of which affidavits are presented with this answer and objections, and made a part hereof, and exhibits thereto in support hereof."
>
> "16. Your complainant further shows that

this petition to amend said removal petition is merely a fraudulent attempt on the part of the defendants to this bill to prevent proof of the facts set forth in the bill showing that they have seized in defiance of law and of right some $20,000,000 of property, and they are asked by the bill to permit proof to be made in support of such charges, and in the effort to make such proof by the testimony of the defendants themselves your complainant was actually engaged on November 4, 1907, at the very hour when the first attempt was made by the defendants by said petition of November 4, 1907, *ex parte*, and without notice, as above set forth, to defeat and delay justice and compel this case to be transferred to this court and appended to the said dead case in the Federal Court.

"17. Your complainant further states and shows unto Your Honor that he *denies the right or power of the court to make the order of amendment for which the petition asks, or grant such leave to amend;* and your complainant shows that it would be a great injustice and entirely without precedent to permit the progress of this case to be stopped and stayed by an investigation of the residence and citizenship of this complainant, *so long undisputed*, upon no other basis than the information and belief of the unknown Parmenter whose conclusions and opinions stated in his affidavit are of the most general description, and false and absurd, and should be disregarded, and the same are entirely untrue as alleged by your complainant, and by a host of witnesses, some of which, nearly twenty in number, know the facts; not one of which facts are stated as known to be true to the knowledge of any party mentioned in the petition for the amendment or in any affidavit attached thereto; and upon such slender foundation the progress of any case may at any time be stopped to the great prejudice and injury of

suitors; and it is important for this court to know that in the presence of this court the solicitor and attorney, said Mayer, who has had the conduct of all this litigation, as he claims, for a part of the clients, has stated his determination, and in obedience to the request of his clients, to litigate every question connected with the litigation, and who has as the said records show, made the most desperate attempts, at every point, in the case, and in said case No. 28695, to delay and defeat justice, and on grounds which, when investigated, are found to be without any foundation and without the slightest merit."

* * * * * * * *

"*Wherefore, and for other reasons, your complainant prays that the said petition for leave to amend said removal petition may be stricken from the files by order of this court, or dismissed, and wholly disallowed and denied, and your complainant will ever pray, etc.*"

Said "Objections and Answer" bears date April 22, 1909, and was signed by said George Harding, and sworn by him on that date.

THIRTY-SIXTH: Against objections and protest of your petitioner, there was also filed in said cause on the 4th day of May, 1909, on said hearing before said Judge Sanborn, a so-called "replication" of said Corn Products Manufacturing Company to the said objections and answer filed therein by your petitioner. Said so-called "replication" is shown on pages 52-69 of Part I of said "Exhibit A."

OPINION AND ORDER ALLOWING AMENDMENT, MAY 15, 1909.

THIRTY-SEVENTH: A true and complete copy of said opinion of said Judge Sanborn filed in said cause on May 15, 1909, is shown on pages 70-76 of Part I of said "Exhibit A." (Said opinion is reported in 170 Fed., 650.) And a copy of said order entered pursuant to said opinion, granting leave to amend said removal petition, marked "Exhibit G," is hereto annexed.

YOUR PETITIONER QUOTES FROM SAID OPINION, FILED MAY 15, 1909, as follows:

> "Motion for leave to amend original removal petition of Corn Products [Manufacturing] Co. The suit was commenced Oct. 23 [19], 1907. * * * On November 5, 1907, the Corn Products [Manufacturing] Co. filed its petition for removal on the ground of separable controversy. The petition stated that said suit presented *a separable controversy between* COMPLAINANT *and* PETITIONER. * * * THE NATURE OF THE SEPARABLE CONTROVERSY IS NOT STATED, and the individual defendants are *assumed* to be only *nominal* defendants. It *seems* to have been also *assumed* that the nature of the separable controversy sufficiently appears from the amended bill."

Said opinion then refers to the notice of November 5, 1907, that removal petition would be presented to Judge Ball, and to the order of CIRCUIT COURT on Nov. 6, 1907, directing filing of transcript in said Circuit Court, and restraining further prosecution of the suit in state court, and the so-called "supple-

ment" to removal petition filed in said Circuit Court on Nov. 6, 1907, which the opinion says was a *"verified"* statement alleging the citizenship of the individual defendants. The opinion then refers to proceedings in the Real Estate Company's suit, including the injunction order appealed from in that case, *describing same as "order of Dec. 13, 1907,"* and states that said injunction appealed from "was issued on the theory that the Harding suit was really the same as the Loan & Trust Company's suit." The opinion then refers to the motion to remand filed in the Harding suit on Dec. 23, 1907, and briefly states the points raised by that motion and quotes therefrom, and thereupon states as follows:

> "It is claimed by complainant that this motion to remand is based upon *Ex Parte Wisner*, 203 U. S., 449. * * * This is not clear, and the motion is quite different from the one filed in the *Wisner* case. This is not important except that the motion does not distinctly apprize defendants that the *Wisner* case was relied on.
>
> "The Circuit Court *regarded* the *motion to remand* as *unimportant, because of* the pendency of the prior case of the Loan & Trust Company, *and would not permit it to be brought on because of the injunction in the first case.* Meanwhile, however, the Loan & Trust Company moved for leave to dismiss the first suit. Leave was denied; but on appeal from the injunction order it was held that it should have been granted. (*Harding* v. *Corn Products* [*Refining*] *Co.*, Jan. 19, 1909.) * * *
>
> "With the bill in the first suit dismissed the Harding suit became the only one pending, and the *importance* of the *removal* and the *motion to remand* HAVING BEEN BEFORE THAT OF LITTLE IMPORTANCE, *at once became matters* OF GREAT

IMPORTANCE AND CONCERN to the *respective* parties."

The opinion then refers to *the petition* filed April 16, 1909, *for leave to amend removal petition,* and then states as follows:

> "Complainant answered the petition *appearing specially and for the purpose only of objection to the jurisdiction of the court,* as stated in his petition to remand filed December 23, 1907, and *insisting* that the court has *no jurisdiction, no power or authority* to *allow* or ENTERTAIN *the motion to amend.* Other objections are stated and it is submitted that complainant is and long has been a citizen of California. * * * It seems * * * the motion for leave to amend should be granted, IF the POWER *of amendment* EXISTS. Defendant relies on *Wilbur* v. *Red Jacket, etc., Co.,* 153 Fed., 662, a case very much like this, for its procedure in bringing its petition for leave to amend.
>
> "*In regard to the question of* POWER, *it is insisted* THAT NO JURISDICTION IS SHOWN BY THE ORIGINAL PETITION FOR REMOVAL. * * * The lower federal courts are *hopelessly divided* on this precise question, but the practice under the Act of 1789 seems to have been clear."

The opinion then refers to the provisions of the Act of 1789, and the decisions construing same, and then proceeds as follows:

> "Before the decision of *Ex Parte Wisner,* in 1906, the decisions of the Circuit Courts of Appeal and of the Circuit Courts, while by no means uniform, were generally in support of the right of removal, even against the plaintiff's objection. The argument in favor of removal is stated by Judge Newman in *Rome Petroleum & Iron Co.* v. *Hughes Specialty Well*

Drilling Co., 130 Fed., 585. * * * Judge Newman therefore denied a motion to remand a case brought in Georgia by a citizen of South Dakota against a citizen of South Carolina. Judge Newman cites *in support of the ruling* * * * the language of the Chief Justice in *Davidson* v. *Railroad Co.*, 157 U. S., 201; 39 L. Ed., 672; 15 S. Ct., 563; *while the Chief Justice himself, in the Wisner case, cites the same case* AS HOLDING THE VERY OPPOSITE. *This illustrates* THE VERY UNSATISFACTORY SITUATION IN WHICH THE COURT FINDS ITSELF IN ATTEMPTING TO DECIDE WHETHER THIS PARTICULAR CASE WAS REMOVED BY THE PRESENTATION OF THE REMOVAL PAPERS TO THE STATE COURT, AND THE DOCKETING AND INJUNCTION ORDER OF THIS COURT THEREIN.

"Since the decision of the *Wisner* and *Moore* cases *there can be no question of the duty to remand on application of a plaintiff*, in the usual case, IN THE ABSENCE OF ANY APPLICATION TO AMEND. But the *narrow* and *unusual* question here presented is whether a federal Circuit Court can *possibly* have *any jurisdiction whatever* of such a case as this *until the plaintiff consents.* IF IT CAN, then amendment *may be* permitted to show that jurisdiction actually exists *unaided by consent or waiver; but* IF NOT, THEN A REMAND IS INEVITABLE. [Citing cases.] * * * *In view of the confusion* surrounding this question arising from the decisions *under the act of 1887-1888*, it is *refreshing* to refer to the plain, satisfactory and uniform construction of the similar clause of the original *Act of 1789*, as stated by Chief Justice Marshall in *Gracie* v. *Palmer*, *supra* [8 Wheat., 698]. And in view of such construction, *and that a decision in favor of the jurisdiction may be readily reviewed*, WHILE A DECISION AGAINST IT CANNOT, the power to amend the petition should be affirmed, and the petition to amend granted, *if* the individual defendants were merely formal parties defend-

ant. That they were such seems clear to me from the cases of *Geer* v. *Mathiesen Alkali Works*, 190 U. S., 429 * * *, and *Lamm* v. *Parrott Co.*, 111 Fed., 241.

"A further question is raised as to the sufficiency of the statement in the removal petition of a separable controversy. It is usual in such petitions, *and generally considered* NECESSARY, *to allege the nature of the controversy;* but if it appears from the record that such a controversy actually existed, it is enough. *This court by its docketing and restraining order of Nov. 6, 1907, took jurisdiction of the case, thus sustaining its jurisdiction. This it had* THE POWER *to do. That order was made* MORE THAN TWO TERMS SINCE, and cannot *now* be *reviewed* in this proceeding, or in any other, *in this court.* This was decided in *Des Moines Nav. Co.* v. *Iowa Homestead Co.*, 123 U. S., 552 * * *, approved by the Supreme Court in *Chesapeake & O. R. Co.* v. *McCabe*, by decision filed April 6, 1909.

"I think, therefore, that the petition to amend should be granted. If it were disallowed, and the case remanded, there could be no review. * * * On the other hand, *complainant* has TWO *remedies*, MANDAMUS IN THE SUPREME COURT TO COMPEL REMAND, *or if a decree goes against him he may have the question reviewed on appeal. Ex Parte Wisner, supra.* Leave to file the amended petition is granted."

NOTE: The prayer was not for leave to file an "amended petition," but for leave *to amend original removal petition*, and the amendment actually allowed by the order entered pursuant to said opinion, as shown by said "Exhibit G," permitted an amendment *only as to the citizenship and residence of said George F. Harding;* and *the amendment actually*

filed, as stated in the 39th paragraph of this petition, and as shown by "Exhibit I" referred to in said paragraph, *related alone to the question of citizenship and residence of said Harding.*

THIRTY-EIGHTH: On May 22, 1909, your petitioner presented in writing, after due notice to said Levy Mayer, his motion, *first,* that said so-called replication be stricken from the files; and, *second,* that said order granting leave to amend should be vacated and set aside; and said motions were taken under advisement by said Judge Sanborn on the 22d day of May, 1909, and the same were, on the 12th day of June, 1909, denied by order of that date, and by said order leave was granted to your petitioner to then file his said written motions, embraced in one paper, *nunc pro tunc,* as of May 22, 1909, and a copy thereof so filed *nunc pro tunc,* together with a copy of said order of June 12, 1909, marked "Exhibit H," is hereto annexed.

AMENDMENT FILED JUNE 14, 1909.

THIRTY-NINTH: On June 14, 1909, said Corn Products Manufacturing Company filed its amendment to said original removal petition, a copy of which amendment, marked "Exhibit I," is hereto annexed. By said amendment allowed against the objection and protest of your petitioner the allegation in said removal petition as to your petitioner's citizenship and residence in CALIFORNIA was stricken out, and in lieu thereof it was alleged that such citizenship and residence was in Chicago, Illinois, as

shown by said "Exhibit I." No other amendment was allowed or made to said original removal petition.

MANDATE OF COURT OF APPEALS ISSUED AND MOTION TO OBEY SAME.

FORTIETH: On June 28, 1909, the mandate of the said United States Circuit Court of Appeals in the said appeal prosecuted by your petitioner, and others, was issued by the Clerk of the said Court of Appeals, and the same was thereupon filed, by leave of said Judge Sanborn, in said Real Estate Company suit on next day. A true and complete copy of said mandate is shown on pages 93-98 of Part I of said "Exhibit A." And on the opening of court June 29, 1909, before said Judge Sanborn, said Real Estate Company moved for entry of an order *in obedience to said mandate;* said motion was thereupon taken under advisement, and allowed on July 1, 1909, as hereinafter shown. Said mandate recites that order staying same was vacated by said Court of Appeals on May 19, 1909.

PETITION TO DISREGARD AMENDMENT PROCEEDINGS AS VOID AND ALLOW ORIGINAL MOTION TO REMAND.

FORTY-FIRST: By the filing of said mandate, and said motion to obey same, your petitioner was thus left free, *for the first time,* to bring on for hearing his said motion to remand, filed on December 23, 1907. Wherefore, on June 30, 1909, after due notice to said Levy Mayer, your petitioner, after said

motion for order in obedience to said mandate had been thus taken under advisement, presented to said Judge Sanborn his verified petition in said cause. Said petition presented June 30, 1909, is shown on pages 86-92 of Part I of said "Exhibit A."

Your petitioner quotes from said petition presented June 30, 1909, as follows:

> "Now comes the said complainant, George F. Harding, appearing specially herein, and, *while saving and reserving, and preserving his objections heretofore made to the jurisdiction of this court in this cause,* AS STATED IN HIS MOTION FILED HEREIN ON DECEMBER 23, 1907, TO REMAND SAID CAUSE TO THE STATE COURT, and as otherwise stated of record in this cause, *and still insisting that this court has not and never had any jurisdiction of or in this cause,* or over or against this complainant in said cause, *or any authority or power therein,* EXCEPT TO REMAND THE SAID CAUSE TO THE STATE COURT, *and saving and reserving, and preserving his objections and exceptions to the several orders of this court in this cause, and every of them,* and every part thereof, *and insisting that all and every of said orders,* INCLUDING PARTICULARLY, THE ORDER PERMITTING AMENDMENT TO REMOVAL PETITION IN SAID CAUSE, *were and are* WITHOUT POWER OR AUTHORITY OR JURISDICTION ON THE PART OF THIS COURT, and therefore wholly null and void, this complainant respectfully represents and states to the court the following, namely:—
>
> "1. That the Corn Products Refining Company (one of the defendants in this cause, and one of the defendants in the suit in Chancery brought by the Chicago Real Estate Loan & Trust Company, an Illinois corporation, as complainant, against the said Corn Products Refining Company, and others, as defendants, in

the Circuit Court of Cook County, Illinois, on May 4, 1907, and removed to this court on June 8, 1907, being a suit in chancery numbered 28695 in this court) presented to this court on November 4, 1907, its petition (or motion) entitled and filed in the said Real Estate Company's suit, purporting to be sworn to upon that date by one Hal C. Bangs, which petition (or motion) now remaining on file in the said suit Numbered 28695 is hereby referred to and made a part of this petition, and an exhibit hereto.

"2. The said petition (or motion) of November 4, 1907, was so presented on that date to this court in said suit numbered 28695, by one Levy Mayer, acting as the attorney and solicitor of the said petitioner, *ex parte*, AND WITHOUT NOTICE to and without the knowledge of the said Real Estate Company, or this complainant, or any other person, or persons, other than the said Corn Products Refining Company, and upon such presentation thereof an order was entered in said suit numbered 28695 by this court on that date, November 4, 1907, *ex parte*, and *without notice*, as aforesaid, restraining this complainant, George F. Harding, and his solicitor, A. B. Joyner, from further prosecuting this suit, now numbered 28865, in this court, and then pending in the Superior Court of Cook County, Illinois, until the hearing and disposition of said petition (or motion) for injunction, and ordering this complainant, and the said A. B. Joyner to show cause on November 12, 1907, why an injunction should not issue against their further prosecution of *this* suit, to which order of November 4, 1907, reference is hereby made, and the same, as a part of the record in said Real Estate Company case, is made a part of this petition, and an exhibit hereto.

"3. On November 5, 1907, the Corn Products Manufacturing Company filed in *this* suit (now No. 28,865) in the said Superior Court of Cook

County, its petition in the said State Court for removal of this cause to this court, and on the same date gave notice to the said A. B. Joyner, as the solicitor for your complainant in said cause (now No. 28,865) that on Wednesday, November 6, 1907, at the hour of 10 o'clock A. M., the said petition for removal would be presented before his Honor, Judge Ball, then and still one of the judges of the said Superior Court, in chancery sitting, which said petition for removal and said notice now appear of record in *this* cause (now No. 28,865), and the same are hereby referred to and made a part of this petition, and exhibits hereto.

"4. *Instead of waiting, however, for the said Judge Ball to pass upon the said petition for removal,* the said Corn Products Manufacturing Company, *without notice to and without the knowledge of this complainant, and without notice to and without the knowledge of any solicitor or agent of this complainant,* appeared before this court on November 6, 1907, and obtained an order granting leave to the said Corn Products Manufacturing Company to file in this court a transcript of the record of the said Superior Court of Cook County in *this* cause, and *staying* the further prosecution thereof in the said State Court, and *enjoining* this complainant, George F. Harding, his agents, representatives, counsel, solicitors and attorneys, from proceeding further with the prosecution of said cause in the said Superior Court, until the further order of this court, to which order of November 6, 1907, reference is hereby made and the same is hereby made a part of this petition, and an exhibit hereto.

"5. And on the said date, November 6, 1907, said Corn Products Manufacturing Company also filed in this cause in this court, *without leave of court, and without notice to, and without the knowledge of this complainant, or any*

agent, or attorney, or solicitor of this complainant, a certain so-called supplement to its said removal petition, said so-called supplement having attached thereto the affidavit of G. W. Powers, purporting to be sworn to by said Powers on November 6, 1907, to which supplement, with said affidavit, reference is hereby made and the same is hereby made a part of this petition and an exhibit hereto.

"6. *As soon as this complainant, George F. Harding, learned of the said entry of the said order of November 6, 1907, in this cause,* THIS COMPLAINANT APPLIED TO THIS COURT FOR LEAVE TO PRESENT HIS MOTION TO REMAND THIS CAUSE TO SAID SUPERIOR COURT, *and, on December 23, 1907, this complainant filed herein his motion in writing to remand this cause to said Superior Court,* AND PRESENTED THE SAME TO THIS COURT, BEFORE JUDGE LANDIS, ON DECEMBER 26, 1907, AND THEN ASKED THAT THE SAID MOTION TO REMAND FILED IN THIS CAUSE BE GRANTED BY THIS COURT, but the said Judge thereupon *refused* to grant the same, and then stated that the same would *not* be allowed, and, THEREUPON, *at the instance of said Mayer,* as solicitor for defendant in said cause, entered an injunction in that suit, numbered 28,695, *under date of December 13, 1907,* RESTRAINING THIS COMPLAINANT FROM FURTHER PROCEEDING WITH HIS SAID MOTION TO REMAND THIS CAUSE, *and from taking any other steps whatsoever in this cause,* the said proceedings of November and December, 1907, being in the said suit No. 28,695, as shown by the record of this court in that cause, including the certificate of evidence signed by said Judge Landis, and filed in that cause on April 30, 1908, to all of which record, including said certificate of evidence, and including the petition for and allowance of appeal from said order entered *under date of December 13, 1907,* reference is hereby made, and the same is made a part of this petition, and pre-

sented herewith as an exhibit to this petition, and your petitioner prays that the same may be made a part of the record in this cause, No. 28,865, in order that all the facts touching his said motion to remand this cause to said Superior Court may be thus made a part of the record in this cause, numbered 28,865. And on the 29th day of June, 1907, the mandate of the United States Court of Appeals for the Seventh Circuit, showing, among other things, the reversal of said order of date December 13, 1907, was filed in this court in said cause No. 28,695, to which mandate reference is hereby made and the same is made a part of this petition, and an exhibit hereto, so that now for the first time this complainant is free to move in this cause for remand of the same to said Superior Court.

"7. *By way of further precaution, and to prevent misunderstanding,* this complainant *now* requests and moves this court to *now* enter an order herein *upon his said filed motion to remand,* BASED UPON THE SAID PROCEEDINGS AND RECORD OF NOVEMBER AND DECEMBER, 1907, *and upon the said petition for removal, as it* THEN *stood in this cause,* WHEN THE SAID MOTION TO REMAND WAS FILED HEREIN, *and when the said motion to remand was then refused even a hearing,* and thus denied, and enjoined by this court, and held and declared by this court to be disposed of and covered and enjoined by the said injunction in the said Real Estate Company's suit, * * * which injunction has now been reversed by the United States Circuit Court of Appeals, of the Seventh Circuit, as shown by the said *mandate* of that court *this day* filed in this court in the said Real Estate Company's suit, to which mandate reference is hereby again made, and the same is made a part of this petition, it thus thereby appearing, and this petitioner, said George F. Harding, also states, that *this present date is*

the first day on which any steps could be taken in this present suit by this complainant since the entry of the said order of November 4, 1907, the said injunction order of date December 13, 1907, by or pursuant to said mandate being *on this date for the first time* vacated and set aside, and *the said suit of said Real Estate Company, and said petition (or motion) of November 4, 1907, having been* THIS *day moved by said Real Estate Company to be dismissed by order of this court, pursuant to said mandate, to which order of dismissal* WHEN ENTERED PURSUANT TO SAID MOTION THIS DAY MADE, *reference is hereby made and the same is hereby made a part of this petition, as an exhibit hereto.*

"Wherefore, this complainant represents and shows to this court that this complainant is *now* entitled to have entered of record herein an order *remanding this cause* to said Superior Court, *on his said motion to remand filed herein on December 23, 1907,* THE SAME ORDER AS THIS COMPLAINANT WAS ENTITLED TO ON DECEMBER 26, 1907, *when he moved this court to grant the same,* and the same was then wrongfully and unlawfully refused and enjoined by said order of December 26, 1907, entered under date of December 13, 1907, this cause having been surreptitiously and wrongfully and unlawfully removed to this court and thus held in this court as above set forth, *and this complainant now prays that such order remanding this cause to said Superior Court be now entered herein, accordingly; and* TO THE END THAT ALL OBSTACLES THAT MAY BE OR BE CLAIMED TO BE IN THE WAY OF SUCH REMAND *may be removed,* this complainant further *requests* and *moves* the court to wholly disregard said supplement filed herein on November 6, 1907, and, if need be, that the same be stricken from the files, and that the petition filed herein on April 16, 1909, for leave to amend said removal petition herein, be disre-

garded by this court, and, if need be, stricken from the files, *and that the order of this court permitting amendment to said removal petition herein be disregarded by this court, and, if need be, vacated and set aside,* and that the amendment filed herein on June 14, 1909, to said removal petition be disregarded by this court, and, if need be, stricken from the files, and this complainant respectfully represents and states that the averments in said amendment filed herein on June 14, 1909, that this complainant was, on October 19, 1907, or since that date, a citizen of Illinois, and a resident of the City of Chicago, in said state, are entirely untrue, and, in fact and in truth, this complainant, George F. Harding, was, on October 19, 1907, and continually since has been a resident and citizen of the State of California and of no other state or country; and this complainant further respectfully shows, *while protesting and objecting, as above stated,* against the efforts of the Corn Products Manufacturing Company herein, to amend its said removal petition herein, *and protesting and objecting that the allowance and filing of the said amendment were and are contrary to all precedent and the practice of this court, and in violation of the law,* and that said amendment is a mere attempt to defeat the restrictions upon the jurisdiction of this court, imposed by the Acts of Congress of 1887-1888, as declared and enforced by the United States Supreme Court in the case of *Ex parte Wisner,* and a mere repetition of the same effort attempted by said injunction above set forth, *and this complainant having denied and still denying the said allegations of citizenship made in said amendment,* as elsewhere more fully shown of record in this case, respectfully *prays that this court will* PROMPTLY *pass upon this complainant's said motion to remand this case* UPON THE BASIS OF THE SAID WRITTEN MOTION FILED HEREIN ON DECEMBER 23,

1907; and this complainant further prays that *in the event* this court shall deny the said motion to remand, that your petitioner be *permitted* to join issue upon the said averments of citizenship in the said amendment to said removal petition, *without waiving his rights and contentions set forth in this petition*, and that a prompt hearing be had upon said issue of fact, TO THE END THAT A PETITION FOR MANDAMUS *may be presented promptly by this complainant to the Supreme Court of the United States, to compel a remand of this case to the State Court*, at the earliest possible moment, to-wit, at the beginning of the October term, A. D. 1909, of said Supreme Court, SO THAT ONE AND THE SAME PETITION FOR MANDAMUS MAY PRESENT COMPLETELY TO THAT COURT THE ENTIRE ACTION OF THIS COURT IN THE PREMISES, * * * * * * * * * * * * ALL TO THE END THAT THERE MAY BE A SPEEDY ADMINISTRATION OF JUSTICE IN THIS CASE, and technical obstacles be avoided, *and possible injustice prevented that might arise out of or result from a partial submission in such petition for mandamus of the rights of this complainant to have this cause remanded to the said Superior Court*, where this complainant claims he has a constitutional right, under the law, to have this case heard, of which right he has been so long deprived by said injunction of this court and by the action of the defendants herein; AND YOUR PETITIONER PRAYS THAT THE RIGHT OF THIS COMPLAINANT TO HAVE HIS SAID MOTION TO REMAND THIS CAUSE TO SAID SUPERIOR COURT ALLOWED UPON THE RECORD HEREIN, *as it existed at the time said motion to remand was filed herein, and presented to this court*, MAY NOW BE RECOGNIZED AND ENFORCED, AND THAT THE RIGHT OF THIS COMPLAINANT TO PROCEED WITH THE PROSECUTION OF THIS SUIT IN SAID STATE COURT MAY BE NO LONGER WRONGFULLY AND UNLAWFULLY DEFEATED AND DELAYED AS HAS BEEN TO THIS TIME

WRONGFULLY AND UNLAWFULLY DONE, *as above set forth;* AND THIS PETITION IS PRESENTED WITHOUT WAIVING THE RIGHT OF THIS COMPLAINANT TO FORMALLY JOIN ISSUE ON SAID REMOVAL PETITION AS AMENDED HEREIN, as aforesaid, *and have such issue tried,* IN THE EVENT THAT THE PRAYER OF THIS PETITIONER BE DENIED BY THIS COURT; AND YOUR PETITIONER WILL EVER PRAY, ETC.

"GEORGE F. HARDING,
Petitioner."

MANDATE OBEYED AND SAID PETITION TO REMAND AGAIN PRESENTED AND TAKEN UNDER ADVISEMENT.

FORTY-SECOND: On July 1, 1909, an order was entered in said Real Estate Company's suit by said Judge Sanborn, dismissing the bill of complaint in that case and dismissing said petition of November 4, 1907, in obedience to said mandate. A copy of said order of July 1, 1909, marked "Exhibit J," is hereto annexed. And thereupon your petitioner again presented to said Judge his said petition dated June 29, 1909, and said Judge thereupon took said petition under advisement.

Said order entered *under date of July 1, 1909,* is entitled in the said Real Estate Company's suit, and refers to said MANDATE as "having *this day* been filed herein"; said Mandate, however, was filed in the said Circuit Court on June 29, 1909 (as elsewhere shown in this petition), and on *that* date, June *29*, 1909, said order entered on July 1, 1909, obeying said Mandate, was actually prepared and put into the hands of the court, and taken under advisement by the court, and the same was entered on July 1, 1909, exactly as thus prepared and submitted to the

court on June 29, 1909, and the said petition dated June 29, 1909, and presented on June 30, 1909, referred to such order so *prepared* and *submitted* on that date in said Real Estate Company's case, and made the same, *when entered,* an exhibit to said petition.

ORDERS OF JULY 9, 1909, DENYING LEAVE TO FILE SAID PETITION PRESENTED JUNE 30TH AND DENYING MOTION TO REMAND AS PRESENTED IN SAID PETITION.

FORTY-THIRD: On July 9, 1909, said Judge Sanborn entered two orders in said cause, in one of which he denied leave to file said petition presented on June 30, 1909 (and July 1, 1909), and in the other of which he overruled the motion of your petitioner to remand, filed December 23, 1907, as set forth and presented in and by said petition presented as aforesaid on June 30, 1909. Copies of each of said orders of July 9, 1909, marked, respectively, "Exhibit K" and "Exhibit L," are hereto annexed.

Your petitioner here quotes from the said order first entered on July 9, 1909, said "Exhibit K," as follows:

> "*Complainant having appeared specially herein, and for the purpose only of moving to remand this suit to the state court on his motion to remand filed herein December 23, 1907,* AND FOR THE SAME ORDER WHICH HE CLAIMS HE WAS ENTITLED TO HAVE MADE DECEMBER 26, 1907, *when he moved the court to grant said motion of December 23, 1907,* William J. Ammen appearing

specially for the plaintiff, and Mayer, Mayer & Austrian for defendants.

* * * * * * * *

"AND IT FURTHER APPEARING TO THE COURT THAT BY REASON OF THE MAKING OF SAID INJUNCTION COMPLAINANT HAD NO OPPORTUNITY TO HAVE SAID MOTION TO REMAND HEARD UNTIL JUNE 30, 1909, WHEN THE MANDATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT WAS FILED IN SAID CASE No. 28,695, DIRECTING THE REVERSAL OF THE SAID INJUNCTION ORDER OF DECEMBER 13, 1907, SO ENTERED DECEMBER 26, 1907.

"Wherefore, *upon the record herein, and the facts herein recited, on motion of counsel* FOR DEFENDANTS, *it is ordered by the court that the said motion to remand this suit to the state court be, and the same is, hereby denied.*"

NOTE: Upon the entry of said order above quoted from, on July 9, 1909, your petitioner *thereupon* presented and filed in said cause his "Answer," mentioned in the next paragraph of this petition for Mandamus, and *thereupon* said court entered its *other* order of date July 9, 1909 (Exhibit L to this petition), fixing the time and manner of taking of proof, on both sides, on such issue of citizenship, and at the foot of *that* order *added* its denial of leave to your petitioner to file said petition presented June 30, 1909, but that *addition* should *properly* have been at the end of the said other order of July 9, 1909 (Exhibit K to this petition), as *that* was the order which *in fact* disposed of said petition presented June 30, 1909, as hereinafter fully and clearly shown.

ANSWER ALLEGING AMENDMENT PROCEEDINGS VOID, AND DEMANDING REMAND AS IN SAID PETITION OF JUNE 30TH, AND DENYING TRUTH OF AMENDMENT, AND ASKING SPEEDY HEARING OF SUCH ISSUE TO THUS INSURE REMAND, AND CLEAR THE WAY FOR PETITION TO SUPREME COURT, IF NEED BE, FOR MANDAMUS TO COMPEL REMAND.

FORTY-FOURTH: Thereupon, on July 9, 1909, your petitioner filed in said cause his answer to said removal petition as amended. A true and complete copy of said answer, marked "Exhibit M," is hereto annexed. Said answer was in fact prepared and sworn to by your petitioner on July 1, 1909, but was held back by your petitioner until said court, on the morning of July 9, 1909, denied the prayer of said petition presented on June 30, 1909, and refused even permission to file the same. In said certificate of evidence dated Nov. 19, 1909, said Judge Sanborn certifies that said petition was presented on June 30, 1909, as shown on page 85 of Part I of said "Exhibit A" and, as shown on page 98, he certifies that that was the same petition he denied leave to file on July 9, 1909, in the last sentence of the order above referred to as "Exhibit L" to this petition.

Your petitioner further shows that his said answer filed July 9, 1909, to said removal petition as amended, is entitled in the said suit brought by your petitioner (and removed as aforesaid to the said Circuit Court), and reads as follows:

> "Now comes the said complainant, George F. Harding, *appearing specially herein, as heretofore,* and *protesting* and *objecting,* as in his

motion to remand filed herein on December 23, 1907, and as in his objections and answer filed herein to the petition or motion to amend the removal petition herein, * * * *that this court is wholly without jurisdiction of or in this cause, or over or against this complainant, and still insisting that this court has not and never had any jurisdiction of or in this cause,* or over or against this complainant in said cause, *or any authority or power therein except to remand said cause to the state court,* and insisting that the said cause has been improperly and unlawfully removed from the state court to this court, and improperly and unlawfully held in this court up to the present time, *and saving, and reserving, and preserving all and every of his objections and exceptions to the several orders of this court in this cause,* and every of them, and every part thereof, *and insisting that the same, including, particularly, the order permitting the amendment to the removal petition in said cause, were and are, respectively,* WITHOUT POWER OR AUTHORITY OR JURISDICTION *on the part of this court, and,* THEREFORE, *wholly null and void,* and insisting and protesting that the said *amendment* filed herein, on June 14, 1909, to said removal petition, was and is *unauthorized* and improper, and that this court has *no jurisdiction* of or in this cause, or of or over this complainant, *notwithstanding the filing of the said amendment* by leave of court herein, and, particularly, *saving and reserving and preserving to this complainant his objections and contentions set forth in his petition presented to this court in this cause on June 30, 1909, and insisting that the prayer thereof should* THEN *have been and should* NOW be granted by this court, and insisting further that this court should not have allowed the said petition for leave to amend the removal petition in this cause, and granted such leave at any time, and,

particularly, before the filing of the mandate of the United States Court of Appeals in the suit in chancery No. 28695, in this court, which mandate was not filed in said cause until June 29, 1909, and had been stayed up to May 19, on motion of appellee therein, *this complainant saving and reserving and preserving all and every of his rights and contentions, aforesaid,* AND TO THE END THAT SUCH PROCEEDINGS MAY BE HAD IN THIS CAUSE AS WILL CLEAR AWAY ALL OBSTACLES AGAINST THIS COMPLAINANT'S APPLYING TO THE SUPREME COURT OF THE UNITED STATES FOR A MANDAMUS TO COMPEL A REMAND OF THIS CAUSE TO THE STATE COURT, for answer to the said petition for removal as amended herein on June 14, 1909, this complainant, George F. Harding, represents and states and shows to the court that it is not true that this complainant, George F. Harding, was, on October 19, 1907, or at any time since that date, a citizen and resident of the State of Illinois, * * * but, on the contrary, * * * this complainant, George F. Harding, was, on October 19, 1907, and continuously since has been and now is a citizen of the State of California, and a resident of the said State of California, and was not on October 19, 1907, and at no time since that date has been, and is not now a citizen or resident of any other state or country than the said State of California.

* * * * * * * *

"And this complainant *prays* that there may be *a speedy hearing and decision of such issue of citizenship,* AND A REMAND OF THIS CAUSE TO THE STATE COURT BY THE ORDER OF THIS COURT, AND, PARTICULARLY, THAT SUCH ACTION MAY BE TAKEN AS WILL ENABLE THIS COMPLAINANT TO APPLY PROMPTLY TO THE SUPREME COURT OF THE UNITED STATES, IF NEED BE, FOR A MANDAMUS TO COMPEL A REMAND OF THIS CAUSE TO THE STATE COURT; *and this answer is presented by this*

complainant, and a trial of the said issue of citizenship requested and demanded by this complainant, WITHOUT INTENDING, IN ANY WAY, OR TO ANY EXTENT, TO WAIVE HIS SAID MOTION TO REMAND HERETOFORE FILED HEREIN, OR ANY PART THEREOF, or his rights, by reason of any decision or action of court thereupon, *and without intending, in any way, or to any extent, to waive his said petition presented to this court in this cause on June 30, 1909, and* SOLELY IN ORDER THAT THIS COMPLAINANT MAY SPEEDILY OBTAIN A REMAND OF THIS CAUSE TO THE STATE COURT, THIS COURT HAVING HERETOFORE REFUSED A HEARING THEREOF, and having even enjoined the bringing on of the same to be heard, and the mandate showing a reversal of such injunction having been filed, as aforesaid, on June 29, 1909, thus leaving this complainant free, *for the first time,* to move for a remand of this cause to the state court, *and this answer is presented without waiving, or intending to waive, any of the protests or objections of this complainant against the said amendment to the said removal petition by leave of this court,* GRANTED IN FACE OF THE SAID INJUNCTION THEN IN FULL FORCE, and against the other objections and protests urged by or in behalf of this complainant against the granting of the same; and this complainant will ever pray, etc."

FORTY-FIFTH: On October 30, 1909, said Judge Sanborn entered an order in said cause, in relating to the taking of testimony on said issue of citizenship, a true and complete copy of which order, marked "Exhibit N," is hereto annexed.

FORTY-SIXTH: On January 26, 1910, your petitioner filed in said cause a certain written motion entitled therein, reading as follows:

"Now comes the complainant in the above entitled cause and moves the court for an order

granting leave to said complainant to take further testimony before a Notary Public, in Chicago, Illinois, upon the issue of his citizenship in said cause, this motion being made by complainant, *while objecting and protesting, as heretofore, against the authority of the court to allow the amendment heretofore allowed to the removal petition in said cause*, under and pursuant to which amendment said issue of citizenship has been made, as stated in the answer of said complainant thereto, *the contention of said complainant still being that the said order allowing the said amendment, and all proceedings thereunder and pursuant thereto*, ARE VOID, AND WITHOUT AUTHORITY OF LAW, *these objections being here restated in order to avoid any waiver or claim of waiver upon the part of said complainant, in regard thereto.*"

ADDITIONAL MOTION FILED JANUARY 26, 1910.

FORTY-SEVENTH: On the same day, January 26, 1910, your petitioner filed in said cause a certain other motion in writing therein, together with the affidavits of your petitioner and William J. Ammen bearing that date and sworn to on that date and attached to and filed with said motion. A true and complete copy of the said motion so filed on January 26, 1910, together with the said affidavits thereto attached and filed therewith, is hereto annexed, marked "Exhibit O." Said motion so filed on January 26, 1910, omitting title and signatures of solicitors for complainant, reads as follows:

"Now comes the complainant in the above entitled cause and moves the court to vacate and set aside the order entered in this cause on July 9, 1909, denying, *or purporting to deny*, a motion *alleged in said order* to have been then made by said complainant to remand this cause to the state court, *the said complainant never having*

made, on that date, the said alleged motion denied, by said order, and in support of said [this] motion said complainant submits his affidavit herewith entitled in said cause together with other proof to be submitted on the hearing of this motion."

And your petitioner here quotes from his said affidavit, attached to and filed with his said motion of January 26, 1910, last above set forth, as follows:

"George F. Harding, being first duly sworn, states on his oath that he is the complainant in the above entitled cause, and *that he never made on July 9, 1909, any motion to remand* this cause to the state court, *as recited in the order of July 9, 1909,* and *purporting* to be denied by that order, but, on the contrary, this complainant then expressly refused and declined to make or adopt any such motion.

"Affiant further states that, on June 30, 1909, he presented to this court his petition entitled in said cause, duly sworn to by him on June 29, 1909, and then offered the said sworn petition, together with other evidence, in support of his motion and prayer set forth in said petition, which said petition is presented with this affidavit, and the same is hereby referred to and made a part hereof, and this affiant then moved the court for leave to file the said petition in said cause, *and that the prayer thereof in relation to the remanding of said cause to the state court be granted* UPON THE GROUNDS AND REASONS AND BASIS SET FORTH IN SAID PETITION; to all of which Levy Mayer, as solicitor for defendant in said cause, objected. Whereupon the court announced from the bench that said petition would be examined by the court and disposed of by an order of court to be entered on a later date in said cause. And thereupon the said petition was delivered to the Judge of said court, the

Honorable Arthur L. Sanborn, for the purposes aforesaid.

"Affiant further states that on several occasions between June 30, 1909, and July 9, 1909, the matter of the said petition was again called to the attention of the said court, by this affiant, in open court, the said Levy Mayer being present as solicitor for defendant before the said Judge, on every of such occasions; and, on July 9, 1909, in open court, the said Levy Mayer being then present again as solicitor for defendant in said cause, the said petition was again presented to said Judge, and this affiant then again moved for leave to file the same, and that the said prayer thereof be granted by the court, and the court thereupon denied to said complainant leave to file the said petition, as recited in another order of July 9, 1909, relating to the taking of depositions in said cause.

"This affiant further states that the said petition of this affiant was thus disposed of by the court on July 9, 1909, subject only to the right of review on a petition for mandamus by said complainant, or otherwise; but, notwithstanding this fact, the said court thereupon, of its own motion, and against the objection of this complainant, entered its said order of July 9, 1909, denying or *purporting* to deny, an *alleged* motion then made by complainant to remand said cause to the state court, but, in truth and in fact, this complainant did not make or present any such motion, and this complainant then and there objected and protested that *the only motion made by this complainant was that contained and set forth* in said petition, and said order of July 9, 1909, reciting said alleged motion to remand, was then made and entered by the court, against the objections of this affiant, then fully stated to the court by this affiant, namely:

* * * * * * * *

"Affiant further states that on April 13, 1909, said Mayer, as solicitor for appellee in the said Court of Appeals, moved that court to modify its judgment and in support of such motion filed therein his printed brief and suggestions, a copy of which is presented to the court with this affidavit and the same is hereby made an exhibit hereto and a part hereof, half of the said brief, namely, pages 12-24, being given to the discussion of the contention that the said Court of Appeals in its opinion and judgment in said cause had acted upon a mistake as to the date of the actual entry of the said injunction order, which motion to modify said judgment was denied by the said Court of Appeals on April 21, 1909, as already shown by the proof before this court in this cause. Further affiant saith not."

Your petitioner further shows that said affidavit of the said Ammen stated that the said statements made in the said affidavit of said Harding "are true of this affiant's own knowledge in so far as the same relate to the proceedings of June and July, 1909, in said cause." Your petitioner further shows that the said affidavits made by your petitioner and said Ammen, and the statements made therein, and the matters and things therein contained, were and are true, as therein stated.

ORDER OF FEBRUARY 10, 1910.

FORTY-EIGHTH: Your petitioner further shows that said two motions of January 26, 1910, were, after due notice to said Mayer, presented to the said Judge Sanborn, on that date, together with the affidavits of said Harding and said Ammen attached to and filed with one of said motions, and thereupon both of said motions were taken under advisement by the said Judge Sanborn; and, on February 10,

1910, the same were disposed of by the said Judge by his order of that date, a true and complete copy of which order, marked "Exhibit P," is hereto annexed, and your petitioner here quotes from the same, as follows:

"The motions of the complainant to set aside the order entered herein July 9, 1909, denying a motion to remand and to permit the complainant to take certain evidence on the issue of citizenship by deposition, in the State of Illinois, instead of having the same taken at the hearing as heretofore ordered, came on to be heard *on the 26th day of January, 1910*, upon the record herein and the arguments of counsel, and the motion to set aside the order of July 9th was further heard on the second day of February, 1910.

"It is thereupon ordered that the motion of complainant to take further testimony upon the issues of citizenship, by deposition, or before a notary public in Chicago, Illinois, be, and the same is hereby denied.

"AND IT APPEARING TO THE COURT THAT THE APPLICATION TO REMAND OF JUNE 30, 1909, RECITED IN AND DENIED BY THE ORDER OF JULY 9, 1909, WAS THE ONE MADE IN THE PETITION OF JUNE 29, 1909, *contained in the certificate of evidence, dated November 19, 1909*, BUT WHICH PETITION WAS NOT PERMITTED TO BE FILED.

"*And it further appearing that all the steps taken by complainant up to and including the 26th day of December, 1907, in respect to remanding this suit are fully stated in the certificate of evidence made by Kenesaw M. Landis, a Judge of this court, in the suit of Chicago Real Estate Loan & Trust Company against Corn Products Refining Company and others*, WHICH IS PART OF THE AFORESAID CERTIFICATE OF EVIDENCE IN THIS SUIT.

"It is thereupon ORDERED upon the record herein, that the motion of January 11, 1910, no-

ticed for January 14, 1910, and heard the 26th of January, 1910, to set aside the order of July 9, 1909, is denied *upon the grounds above stated.*

"And it is further ordered that the additional motion of complainant to vacate and set aside said order of July 9, 1909, together with the affidavit of George F. Harding, accompanying the same, purporting to have been filed January 26, 1910, are struck from the files because entirely unnecessary to preserve the rights and interests of the complainant herein."

FORTY-NINTH: Your petitioner here quotes from the said certificate of evidence signed by Judge Sanborn under date of November 19, 1909, in said cause, the following, as shown on pages 85, 92 and 98 of Part I of said "Exhibit A," namely:

"The court further certifies [page 85] that the following petition was presented by complainant on June 30, 1909, but was not permitted to be filed."

Then follows said petition as shown on pages 86-92 of Part I of said "Exhibit A," and thereupon the certificate of evidence recites, on page 92, as follows:

"Complainant offered in evidence *in support of said petition*, the evidence already appearing in this certificate of evidence, and the original mandate of the Court of Appeals referred to in said petition, which mandate is as follows:"

Then follows on pages 92-98 said mandate dated June 28, 1909, and filed in the Real Estate Company's suit on June 29, 1909. Thereupon the Certificate of Evidence recites (on page 98) that "the concluding sentence of the order of July 9, 1909,

fixing term probatory has reference to the foregoing petition," and that "the foregoing was all the evidence," etc.

OPINION FILED OCTOBER 25, 1910.

FIFTIETH: The hearing on said issue of citizenship closed on July 18, 1910; and, on October 25, 1910, said Judge Sanborn filed in said cause his opinion deciding such issue against your petitioner, a true and complete copy of which opinion, marked "Exhibit Q," is hereto annexed. Your petitioner quotes the last sentence thereof as follows:

> "An order should be entered finding complainant to have been a citizen of Illinois when the bill was filed in the state court, October 19, 1907, *and denying the motion to remand.*"

FIFTY-FIRST: In October 29, 1910, said Levy Mayer served upon said Ammen, as solicitor for your petitioner in said cause, a notice entitled in said cause, stating that on Nov. 2, 1910, he, said Mayer, would move the court before said Judge Sanborn, "that an order be spread of record in the above entitled case, based upon the entry in the minute book of the Clerk of said court, entered on October 25, 1910, and on the opinion of Judge A. L. Sanborn in the above entitled cause, filed herein on October 25, 1910, a copy of which is herewith served upon you. A true and complete copy of the said notice, marked "Exhibit R," is hereto annexed.

FIFTY-SECOND: Pursuant to said notice the said Mayer and said Ammen appeared before said Judge Sanborn, on November 2, 1910; and thereupon the said Judge, *against the objections of said Ammen as solicitor for your petitioner*, entered an order in

said cause, bearing date October 25, 1910, and entered as of that date pursuant to said opinion filed on that date, and entitled in said cause, a true and complete copy of which order, marked "Exhibit S," is hereto annexed. Your petitioner here quotes said order (omitting title) as follows:

> "There having heretofore come on to be heard the removal petition, *as amended,* of the defendant Corn Products Manufacturing Company, the same having been amended by leave of court granted on May 15, 1909, *and upon the answer of said complainant, George F. Harding, to said removal petition, as amended, which answer was heretofore filed herein on July 9, 1909,* and which answer prays for a trial upon the issue of citizenship raised by said answer, *and also prays that there may be a remand of this cause to the state court,* and the court having heretofore heard and considered the evidence and taken the matter under advisement, and being now fully advised in the premises, and the parties being now in court by their respective solicitors, the court finds that said George F. Harding was, on October 19, 1907 (the date when the original bill of complaint herein was filed by him in the Superior Court of Cook County, Illinois), and continuously since has been, and now is, a citizen of the State of Illinois and a resident of the City of Chicago, in said state; and
>
> "The court further finds that said George F. Harding was not, on October 19, 1907, and at no time since has been, and is not now, a citizen or resident of the State of California; and
>
> "*The court further finds that said complainant, George F. Harding, is not entitled to have this cause remanded to the state court.*
>
> "WHEREFORE, the premises considered, it is hereby ORDERED, ADJUDGED AND DECREED that *the prayer and motion* OF SAID ANSWER *of George F. Harding, that this cause be remanded to the*

Superior Court of Cook County, Illinios, be and the same is hereby overruled and denied; and

"It is hereby FURTHER ORDERED, ADJUDGED AND DECREED that the said Corn Products Manufacturing Company is entitled to and shall be paid by said George F. Harding all of the costs incurred by said Corn Products Manufacturing Company in the matter of said hearing upon said removal petition, as amended, and said answer thereto, said costs to be taxed by the Clerk of this court; and that execution issue therefor."

FIFTY-THIRD: No certificate of evidence has yet been filed or presented or prepared in relation to the hearing and decision of the said issue of citizenship, and your petitioner therefore asks leave to here quote from the shorthand reporter's transcript of the proceedings before the said Judge Sanborn, on November 2, 1910, for the purpose of showing your petitioner's objections then renewed to the jurisdiction of said court, and what was then said in open court by said Judge and by said solicitors therein, a true and complete copy of which reporter's transcript is hereto annexed, marked "Exhibit T," and your petitioner quotes therefrom, as follows:

FIFTY-FOURTH: Your petitioner further shows that he is informed and advised by counsel and believes that the said Judge Arthur L. Sanborn and said Circuit Court for the Northern District of Illinois, Eastern Division, and each of them, were and are wholly *without jurisdiction* in the said suit brought by your petitioner in said Superior Court of Cook County, Illinois, and have been and still are *wholly without jurisdiction therein* EXCEPT TO REMAND SAID CAUSE TO THE SAID STATE COURT; and particularly, that *the allowance of the said amendment*

to the said removal petition by said Circuit Court, AND ALL SUBSEQUENT ACTION THEREUNDER, OR BY VIRTUE THEREOF, was and is WHOLLY NULL AND VOID BY REASON OF LACK OF JURISDICTION AND LACK OF POWER upon the part of said Circuit Court; and that said Circuit Court should be required to remand said cause to said state court, and, also, if need be, *required to vacate and set aside all orders entered by said Circuit Court in said cause* STANDING IN THE WAY OF SUCH REMAND, if any such orders there be, *and required and commanded to desist from any and all further action in said cause under claim of jurisdiction therein,* EXCEPT TO REMAND THE SAME TO SAID STATE COURT.

WHEREFORE your petitioner prays that an order and rule be made and issued by this Honorable Court directing the said Honorable Arthur L. Sanborn, and directing the said United States Circuit Court of the Northern District of Illinois, Eastern Division, to show cause why a writ of mandamus should not issue prohibiting said Judge, and said court, from assuming or exercising any jurisdiction in the said suit brought by your petitioner, *except to remand the same to said state court,* and to show cause why said Judge, and said Circuit Court, should not be compelled by a writ of mandamus from this Honorable Court to remand said cause to said state court, and your petitioner prays for such other and further writs and relief as to this Honorable Court may seem just and meet, and your petitioner will ever pray, etc.

WILLIAM J. AMMEN,
Attorney for Petitioner.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

GEORGE F. HARDING, being first duly sworn, states on his oath that he is the petitioner above named, and has read the foregoing petition, together with the exhibits therein referred to and made a part thereof, and that the said petition and the matters therein stated are true as therein stated of his own knowledge, except as to those matters stated therein to be upon his information and belief, and as to those matters he believes the same to be true.

Further affiant saith not.

Dated this 8th day of December, A. D. 1910.

GEORGE F. HARDING.

Subscribed and sworn to before me
this 8th day of December, A. D. 1910.

(Seal) ALICE WILLNER,
Notary Public in and for Cook
County, Illinois.

EXHIBIT B.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
For the Seventh Circuit.
October Term, A. D., 1908.

George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen,
Appellants,
vs.
Corn Products Refining Company,
Appellee.
No. 1497.

Now comes said appellee, Corn Products Refining Company, and respectfully moves this Honorable Court to modify the judgment of this Honorable Court entered herein on January 19, 1909, by striking out of said judgment that part thereof WHICH REMANDS SAID CAUSE "to the said Circuit Court with direction to dismiss the bill of the Real Estate Company in conformity with one or the other motions filed therefor," and in support of this motion, said appellee files herewith and in support thereof, a certificate of Hon. H. S. Stoddard, Clerk of the United States Circuit Court for the Northern District of Illinois, Eastern Division, in which certificate said clerk transcribes and certifies to the accuracy of a certain minute, as the same appears on the original minute book of said Circuit Court *under date of December 13, 1907;* and in support of this motion, said appellee submits herewith the following suggestions.

Respectfully submitted,

LEVY MAYER,
Attorney for said Corn Products Refining Co., Appellee.

EXHIBIT C.

PETITION FILED APRIL 16, 1909, FOR LEAVE TO AMEND REMOVAL PETITION.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION. } ss.

IN THE UNITED STATES CIRCUIT COURT,
In and for the Northern District of Illinois,
Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herbert, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford, and E. P. Wemple,
Defendants. } No. 28,865.

To the Honorable Judges of said Court:

Your petitioner, Corn Products Manufacturing Company, respectfully shows unto your Honors the following:

That on November 6, 1907, leave was given by this court to file, and there was on said date filed herein pursuant to said leave, a transcript of the

record of the Superior Court of Cook County, Illinois, in the case of *George E. Harding* v. *Standard Oil Company et al.*, being Case No. 263,565 in said Superior Court of Cook County, and which case is the same and identical case as that specified in the title and caption to this petition, and said case is now pending in this court;

That your petitioner, on November 5, 1907, filed in said Superior Court of Cook County, in said case while the same was then therein pending, a petition to remove said cause into this court, as appears from the record herein; that in said petition your petitioner set forth, among other things, the following:

> "That at the time of the commencement of this suit, the said complainant, George F. Harding, was and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country."

That said George F. Harding, as will appear from the record herein, filed an original bill of complaint in said cause in said Superior Court of Cook County on October 19, 1907.

That six days thereafter, on October 25, 1907, said George F. Harding filed in said cause in said Superior Court, as will appear from the record herein, an amended bill of complaint; that in said original bill of complaint and said amended bill of complaint, as appears from the record herein, said George F. Harding, in the opening of both said original and amended bills of complaint, described

himself and used the following language for that purpose:

> "Your orator, George F. Harding, a resident and citizen of the State of California, humbly complaining, respectfully represents unto your Honors."

That relying upon said George F. Harding's own statement as to his said residence and citizenship, as aforesaid, your petitioner in its said petition for removal, used, followed and adopted the said statement so made by said George F. Harding in his original and amended bills of complaint, and your petitioner therefore, in its said petition for removal used the language above quoted to the effect

> "that at the time of the commencement of this suit the said complainant, George F. Harding, was and continuously since has been and now is a resident and citizen of California and a citizen of no other state or country."

Your petitioner at the time of preparing, signing, verifying and filing said petition for removal, and continuously since, except as hereinafter otherwise stated, relied upon and believed the said statement of said George F. Harding as to his said residence and citizenship.

That on or about March 15, 1909, your petitioner became doubtful of the truth of said allegation of said George F. Harding as to his said residence and citizenship, and thereupon at once started an exhaustive inquiry and investigation, both in California and in Illinois, as to the truth of said allegation of said George F. Harding as to his said residence and citizenship; that in order to make such

investigation your petitioner employed careful and reliable persons to make such investigation; that one of the persons so investigating in California as to the residence and citizenship of said George F. Harding returned from California on April 12, 1909; that the investigation made in the State of Illinois as to the residence and citizenship of said George F. Harding was not concluded until April 14, 1909.

Your petitioner further states that since it began its investigation as aforesaid, and only since said date, did it acquire any knowledge as to the falsity of said statement of said George F. Harding so made in his said original and amended bills of complaint, to the effect that he was or is a resident or citizen of the State of California.

Your petitioner further states that its said statement in its said petition for removal, and the information upon which said statement was founded, as to the said residence and citizenship of said George F. Harding, were based upon and came absolutely and exclusively from the said statement so contained in said George F. Harding's original and amended bills of complaint.

Your petitioner further states that the said statement of said George F. Harding in his said original and amended bills of complaint contained, as to his residence in and citizenship of the State of California, was, on October 19th, 1907, at the time said statement was made in said original bill, and also on October 25, 1907, at the time said statement was made in said amended bill, and continuously since October 19, 1907, was and has been and is false.

That your petitioner did not discover the falsity of said statement until on or about April 12, 1909, several weeks after it started said investigation.

Your petitioner states that on October 19, 1907, and for a long time continuously theretofore and continuously since October 19, 1907, up to and including the present time, the said George F. Harding was, has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago, Illinois, and a citizen and resident of no other city, state or country whatsoever.

Your petitioner further states that since said investigation was started he learned, and now states as facts, that said George F. Harding was born in or about the year 1829; that he studied law in Monmouth, Illinois, and was admitted to the bar of the Supreme Court of Illinois on or about June 20, 1850; that he has practiced law in the State of Illinois since that date, and is now so practicing for himself as a client; that in November, 1855, he married his wife, Adelaide M. Harding, who is still living; that he has lived in the State of Illinois nearly all his life; that since 1862 he has resided in said City of Chicago, and since 1872 at 2536 Indiana avenue in said City of Chicago; that on or about February 3, 1890, his said wife sued said George F. Harding in the Circuit Court of Cook County, Illinois, for separate maintenance, and on or about July 26, 1897, secured a decree therefor, which decree was subsequently affirmed in the Supreme Court of Illinois, on or about January 9, 1899; that said George F. Harding bitterly contested said proceeding, as will appear from the reports of various phases thereof contained in

Harding v. *Harding*, 144 Ill., 588; *Harding* v. *Harding*, 79 Ill. App., 590; *Harding* v. *Harding*, 79 Ill. App., 621; *Harding* v. *Harding*, 180 Ill., 481; *Harding* v. *Harding*, 180 Ill., 592; *Harding* v. *Harding*, 205 Ill., 105; that on or about August 31, 1897, or about a month after said decree for separate maintenance was so rendered by said Circuit Court of Cook County against said George F. Harding, he filed a bill in the Superior Court of San Diego County, California, against his said wife, in which bill said Harding sought a divorce from his wife on the alleged ground of desertion; that the manifest purpose and object of said proceeding for a divorce was to prevent the enforcement of said decree for separate maintenance in favor of his said wife, and that he subsequently attempted in the courts of Illinois to set up said decree of divorce as a bar to further payments for separate maintenance; that in said divorce bill said George F. Harding alleged that he was a resident and citizen of the State of California, the laws of California then requiring a prior residence on the part of the complainant seeking a divorce in said state for at least three months, in the county, and one year in the state; that although said divorce bill was filed on August 31, 1897, in said San Diego County Superior Court, the case was not tried until on or about January 14, 1910, and on or about January 31, 1901, the said San Diego court dissolved said marriage, and decreed a divorce in favor of said George F. Harding; that said decree was reversed by the United States Supreme Court in *Harding* v. *Harding*, 198 U. S., 317, on May 15, 1905, and thereafter the reversing mandate of said

United States Supreme Court was filed in the Supreme Court of California on August 7, 1905, and on February 2, 1906, in said Supreme Court of San Diego County.

Your petitioner states that the said George F. Harding took up a pretended residence in California for the purpose of enabling him to apply for said divorce, and that the subsequent pretense of residence in California on the part of said George F. Harding has been due to the fact that he thertofore, as aforesaid, claimed such residence in his said divorce proceeding; that the reversal by the United States Supreme Court of said divorce decree so rendered by said San Diego Superior Court, forever vacated and annulled all the findings and conclusions of said decree; that in said divorce proceedings said George F. Harding claimed that he had taken up his residence in San Diego, California, on May 15, 1895, or more than five years after his said wife had as aforesaid instituted her said suit for separate maintenance against him in the Circuit Court of said Cook County, and while the same was there pending and being prosecuted against him.

Your petitioner further states that said George F. Harding never registered as a voter and never voted in the State of California; that he never paid any taxes on real or personal property in San Diego; that his name never appeared either in the city or telephone directories therein; that he was never therein for a longer period than a few weeks at a time, and then only at very considerable intervals, and that he has not been in said San Diego since 1902; that during all of the time that said George F.

Harding was in California, and since, he had and now has most, if not all, of his property in the State of Illinois.

Wherefore, your petitioner moves and prays that it may have leave to amend its said petition for removal, by inserting in lieu of the sentence,

> "George F. Harding was and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country."

the following:

> "George F. Harding was, on October 19, 1907, and continuously since has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago in said state, and that he was not, on October 19, 1907, and at no time since has been, and is not now a citizen of any other state or a resident of any other city."

And your petitioner further moves and prays for leave to further amend said petition by inserting therein the following:

> "That this suit is one arising under the Constitution and Laws of the United States and involves a federal question, and that the settlement of said federal question is essential to the determination of said cause."

And your petition will ever pray, etc.

CORN PRODUCTS MANUFACTURING COMPANY,
By FREDERICK T. FISHER,
President.

J. M. SHEEAN,
CALHOUN, LYFORD & SHEEAN,
Solicitors.
LEVY MAYER,
Of Counsel.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

Frederick T. Fisher, being first duly sworn, upon oath deposes and says that he is the president and agent in this behalf of said Corn Products Manufacturing Company, the above-named petitioner; that he has read the above and foregoing petition and that he knows the contents thereof; that said petition is true to the best of his knowledge, information and belief; that he makes this affidavit for and on behalf of said Corn Products Manufacturing Company, and has full authority to make the same.

FREDERICK T. FISHER.

Subscribed and sworn to before me, a Notary Public, by said Frederick T. Fisher, this 15th day of April, A. D. 1909.

KATHRYN MCDONALD,
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION THEREOF.

IN THE UNITED STATES CIRCUIT COURT,
In and for the Northern District of Illinois,
Eastern Division.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford, and E. P. Wemple,
et al. *Defendants.*
No. 28,865

Now comes said Corn Products Company, Corn Products Refining Company, Conrad H. Mattheissen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford and E. P. Wemple, defendants, jointly and severally, by James M. Sheean, their solicitor, and jointly and severally appear specially, and specially only, for the purpose of uniting, and they hereby severally do unite in the above and fore-

going motion of the Corn Products Manufacturing Company, one of said defendants, and they hereby jointly and severally consent that the prayer of the above and motion, asking for leave to amend the petition for removal filed by said Corn Products Manufacturing Company on November 5, 1907, as shown by the record herein, may be granted in accordance with the said prayer of said motion, and they jointly and severally say that the allegations contained in the above and foregoing motion are true.

CORN PRODUCTS COMPANY,
CORN PRODUCTS REFINING COMPANY,
CONRAD H. MATTHEISSEN,
CHARLES L. GLASS,
WILLIAM W. HEATON,
NORMAN B. REAM,
WILLIAM J. CALHOUN,
JOY MORTON,
BENJAMIN GRAHAM,
T. B. WAGNER,
H. G. HERGET,
THOMAS P. KINGSFORD,
WILLIAM C. SHERWOOD,
W. H. NICHOLS,
EDWARD T. BEDFORD and
E. P. WEMPLE.

By J. M. SHEEAN,
Their Solicitor.

United States of America,
Northern District of Illinois,
Eastern Division. } ss.

In the United States Circuit Court,
In and for the Northern District of Illinois,
Eastern Division.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford, and E. P. Wemple,
Defendants. } No. 28,865.

Now comes Standard Oil Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, defendant, appearing specially and specially only, by its solicitors, Alfred D. Eddy and Robert W. Stewart, and for the sole and single purpose of consenting to the above and foregoing motion of Corn Products Manufacturing Company, one of said defendants, and expressly reserving unto itself the right to make any and all objections to the jurisdiction of said United States Circuit Court over the person of this defend-

ant, by reason of said defendant not having been served with any process herein; and also reserving unto itself the right to make any and all objections to the jurisdiction of the Superior Court of Cook County, State of Illinois, the court in which said action was first commenced, consents that the prayer of the above and foregoing motion asking for leave to amend the petition for removal, filed by said Corn Products Manufacturing Company on November 5, 1907, as shown by record herein, may be granted in accordance with the prayer of the said motion.

STANDARD OIL COMPANY,
A New Jersey Corporation.

By ALFRED D. EDDY,
ROBERT W. STEWART,
Its Solicitors.

United States of America,
Northern District of Illinois,
Eastern Division. } ss.

In the United States Circuit Court,
In and for the Northern District of Illinois,
Eastern Division Thereof.

George F. Harding,
Complainant,

vs.

Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford, and E. P. Wemple,
Defendants.

No. 28,865.

Levy Mayer, being first duly sworn, upon oath deposes and says as follows:

1. I now am and on October 19, 1907, was, and for many years theretofore had been a member of the bar of this court, and of the United States Supreme Court. I was, on October 19, 1907, and ever since have been, and now am, of counsel in the above entitled cause for said Corn Products Company, Corn Products Refining Company and Corn Products Manufacturing Company, three of the defendants to the bill of complaint herein. On November 4, 1907,

and continuously since, Mr. James M. Sheean, of the firm of Messrs. Calhoun, Lyford & Sheean, was and still is one of the solicitors for said three named defendants.

2. On November 4, or 5, 1907, I prepared and caused to be filed, as prepared by me, the petition for removal filed herein by said Corn Products Manufacturing Company; that said petition so on file is the same petition, in manner and form as it was prepared by me; that the following statement in said petition contained—

> "That at the time of the commencement of this suit, the said complainant, George F. Harding, was and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country,"

was inserted in said petition because and on account of the allegation contained in the bill filed herein on October 19, 1907, and in the amended bill filed herein on October 25, 1907, which statement is as follows:

> "Your orator, George F. Harding, a resident and citizen of the State of California, humbly complaining, respectfully represents unto your Honors."

3. The said statement above quoted from and so contained in said petition for removal as to the residence and citizenship of said George F. Harding was due entirely to the misinformation under which I then labored and which misinformation was derived by me from the said statement above quoted and so as aforesaid contained in said original and amended

bills as to the residence and citizenship of said George F. Harding.

And further deponent saith not.

LEVY MAYER.

Subscribed and sworn to by said Levy Mayer before me, a Notary Public, this 15th day of April, A. D. 1909.

(Sgd.) KATHRYN MCDONALD,
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION. } ss.

IN THE UNITED STATES CIRCUIT COURT,
In and for the Northern District of Illinois,
Eastern Division Thereof.

George F. Harding,
vs.
Standard Oil Company *et al.* } No. 28,865.

Harlen H. Parmenter, being first duly sworn, upon oath deposes and says that he is of lawful age; that at the request made in March, 1909, by said Corn Products Manufacturing Company, he has since March 17, 1909, been making careful and exhaustive investigation for the purpose of determining the residence and citizenship of the above complainant, George F. Harding, on October 19, 1907, and before and continuously since said date up to the present time; that based upon said investigation deponent says that for a long time continuously prior to Oc-

tober 19, 1907, and on October 19, 1907, and continuously since up to and including the present time, said complainant, George F. Harding, had been, was and is a citizen of the State of Illinois and a resident of the City of Chicago, in said State of Illinois; that said George F. Harding was not, on October 19, 1907, and at no time since has been, and is not now a citizen of the State of California, or a resident of said state.

And further deponent saith not.

(Sgd.) HARLAN H. PARMENTER.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Harlen H. Parmenter, being first duly sworn, upon oath deposes and says that the above and foregoing affidavit, by him subscribed, is true to the best of his knowledge, information and belief.

HARLEN H. PARMENTER.

Subscribed and sworn to before me, a Notary Public, this 15th day of April, A. D. 1909.

(Sgd.) DAVID F. ROSENTHAL,

(SEAL) *Notary Public.*

EXHIBIT D.

PROCEEDINGS OF APRIL 16TH, 1909.

"Mr. Mayer: This is a motion, your Honor, for leave to amend the petition for removal which we filed in the case entitled George F. Harding against the Sandard Oil Company *et al.*

"Mr. Ammen: If the court please, before this is taken up—

"Mr. Mayer: Pardon me, pardon me.

"Mr. Ammen: I want to state that I ask for a postponement of the presentation of this matter.

"The Court: Well, I don't know what he is asking. Just sit down for a moment.

"Mr. Mayer: The petition for removal in this case states that George F. Harding, who is a citizen and resident of California—that statement is made in the petition based upon the statement contained in Harding's bill. The motion now submits to the court, under oath, that that statement made by Harding in his bill was false, and that instead of being a citizen and resident of California, he was, on the date of the filing of the bill, a citizen and resident of the State of Illinois, and the petition for leave to amend was to insert in the petition for removal of that, namely, that the statement contained in the bill of Harding was false in that he was then a citizen and that he is now a citizen and resident of California, and the United States Supreme Court, in the 191st U. S., has decided that it follows as a matter of course, it is like amending a process.

"Mr. Ammen: If the court please, I want to make a statement here. In the Harding case, Mr. Harding alone has appeared of record as counsel. I will enter a special appearance for

him in the case in writing for the purpose of postponing the hearing or allowance of this motion. Mr. Harding is not in town. He has not been served.

"The Court: Was this case before me?

"Mr. Ammen: This is the other case. This is the Harding case.

"The Court: I did not hear this case.

"Mr. Ammen: This is the case in which your Honor enjoined any further proceedings, but your Honor entered an order in the real estate company's case, if your Honor will remember, in the Chicago Real Estate Loan & Trust Company case.

"The Court: This is the case of Harding against the Corn Products Company and others. And the other case was the Real Estate Title & Trust Company against the Corn Products Company.

"Mr. Mayer: Against the same defendant.

"The Court: In this case you say the complainant is—

"Mr. Mayer: George F. Harding.

"Mr. Ammen: George F. Harding has entered his appearance as his own attorney.

"The Court: As his own attorney?

"Mr. Ammen: Yes, sir, and he is not in town.

"The Court: When will he be here?

"Mr. Ammen: We think in a few days. We can communicate with him very quickly and find out. I am prepared to enter a special appearance for him. But he is his own attorney. Your Honor knows his activity in these cases and he would be likely to object to a matter of this kind if I did anything in his absence, at least without an opportunity to say, 'go ahead without me,' or saying, 'I will be there.'

"The Court: I certainly will do that if you say he will be herein a few days.

"Mr. Mayer: Will your Honor pardon me a moment? I have the record in the United States

Supreme Court and Circuit Court of Appeals, which shows that William J. Ammen and George F. Harding appeared throughout the entire litigation for the plaintiff in this second suit.

"Mr. Ammen: Why, certainly—

"Mr. Mayer: And that both of them appeared in the motion to remand this second suit. This is the second suit whose prosecution your Honor enjoined.

"The Court: Let me see the—

"Mr. Ammen: That was the case in which Mr. Harding and I appeared for the respondents to the injunction rule; that was not this case. This case has never been before the Court of Appeals. In the Real Estate Company case—

"The Court: Let me see that.

"Mr. Mayer: Yes, I will give it to your Honor.

"Mr. Ammen: In that case your Honor will remember you enjoined Harding and myself and Harding's son. Now, as respondents, we appealed as the parties enjoined. Mr. Harding and I did appear in that case.

"The Court: As attorneys for the plaintiff?

"Mr. Ammen: As attorneys for the respondents.

"The Court: That does not meet the question here. We are wasting time. The assertion has just been made by your adversary—

"The Court: Proceed with this matter.

"Mr. Mayer: I have no doubt, your Honor, that this is fairly fresh in the court's mind. I do not want to repeat. In this suit the Real Estate Company was the plaintiff. In that suit one of the defendants, the Corn Products Refining Company, applied to your Honor for an injunction against George F. Harding and his attorney from prosecuting the second George F. Harding suit. That is the motion that your Honor heard; that is the motion that went to the Court of Appeals, and on a writ of *certior-*

ari to the United States Supreme Court, and that is the motion, your Honor, in which the Court of Appeals has only Monday of this week granted a re-argument after it had been to the United States Supreme Court, and that is now under consideration, oral argument having been had day before yesterday before the Circuit Court of Appeals, and under consideration by Judges Grosscup, Kohlsaat and Baker. The only controversy that has been before your Honor has been by the contempt rule which your Honor recalls and the application for an injunction to enjoin the second suit. I do not presume your Honor has kept track of the decisions, but the Circuit Court of Appeals held that your Honor did right in enjoining the second suit, that that is the law, and that it ought to have been enjoined, that the second suit is the same as this, begun by the same parties and against the same parties, involving the same subject-matter, and that it is an apparent attempt to get away from the first case. Now, they reversed your Honor on this ground that your Honor's injunction, which was decided in December, December 13, was not an injunction until December 26, when it was physically signed, and had to be continued through this litigation in the court there—I mean in the Federal Supreme Court—that your Honor did not enjoin on December 13th at all, and that all you did on December 13th was to discharge the rule for contempt; and because the clerk did not, on that date, make a physical minute of your Honor's order. The Circuit Court of Appeals held in its opinion—I want to say to your Honor that on the rehearing an application was made for leave to grant oral argument and supply a printed brief. They held it was contempt. It was suggested that you did not enjoin on December 13. Upon that point, and that only, did the Circuit Court of Appeals reverse the in-

junction because they said the motions to dismiss having been presented on December 26—I don't know whether your Honor will recall Christmas, the intervening holidays—that these motions to dismiss were presented before your Honor decided the injunction, and that, therefore, the motion to dismiss ought to have been allowed. All of the controversies of every kind had reference to the second suit. Your Honor's rule for contempt was because they began the second suit; your injunction was to enjoin the second suit. Now, let us see what the record shows.

"Mr. Ammen: What page, please?

"Mr. Mayer: Page 415. 'Prayer for an appeal from the injunction. Now, come the respondents, George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen appearing themselves,' etc. And it is signed George F. Harding, George F. Harding, Jr., A. B. Joyner, William J. Ammen, respondents, by William J. Ammen, their solicitor. And in the corner, William J. Ammen, solicitor for respondents. The assignment of errors is signed George F. Harding, George F. Harding, Jr., A. B. Joyner, William J. Ammen, respondents, by William J. Ammen, their solicitor. The certificate of evidence—I read from page 231—shows the following. Instead of that page I first want to read from page 217.

" 'The Court: I shall not, of course, dispose of the question on which the court heard arguments at the last hearing till something is done under the order to restrain the further prosecution of the suit, disposing of the motion to remand, that is the motion in the second case. In other words, the motion to remand is not in order now in view of what the court has done in this litigation.

" 'Mr. Harding: I will study on that. In

the meantime we want to make the motion to remand and ask your Honor to hear it.

"'The Court: We will come to that after the order has been entered. Unless it is modified it will not permit the consideration of the motion which counsel now indicates.

"'Mr. Ammen: It is an endeavor to preserve the rights of the parties in the other case' —they are discussing now the motion to remand the second case.

"The Court: I don't think you need to remind me of the details of the situation. As a matter of substance you gentlemen were here representing the interests that the complainant in each case stood for, you worked together. And regardless of what the record may show to have been a formal motion through which counsel went in getting his appearance of record in the cause, we all have no doubt in our minds as to who the attorneys for the plaintiff were in the two suits, but if you want I must await the arrival of your associate; unless there is some emergency opposed to it, you can have a continuance.

"Mr. Ammen: He, not only being his own counsel and attorney, but being the client, ought to have it.

"The Court: But I do not want anybody to misunderstand me. I am not doing this on the theory that the complainant in this suit is not now represented before me.

"Mr. Ammen: Even if that be true, your Honor, still—

"Mr. Mayer: Now, the emergency is this: They have given notice, if the court please, to ask for an immediate *procedendo* from the Circuit Court of Appeals in the appeal from the injunction, and at no time do we get in there but what there rings in our ears interminable delay. We want an immediate mandate. We have had one experience, your Honor, which I

think Judge Calhoun and myself will never have again in this litigation so far as we can avoid it. When we present the motion, with the permission of the court, we are going to ask its consideration, and we are going to ask an immediate order in accordance with what the court desires and an entry of that order. You will remember that when I presented the bill, a draft of the injunction order, on December 23, counsel stated—and I speak it word for word from the record—that he would like a few days' adjournment so as to enable him to study my draft of the order, and to present to your Honor his draft. Your Honor directed that he should present his draft, and at Mr. Ammen's instance adjourned until 10 a. m., December 26. On Christmas, he served me, at the hotel, with a copy of the motion to dismiss, and at 10 a. m. of December 26, instead of presenting the draft, his draft of the order, to prepare which and only which, your Honor gave him at his instance an adjournment, he stated that he had not time to study my order. On December 26 he came in with the motions to dismiss. We want to avoid that contingency, your Honor. The Supreme Court has held that we are entitled to amend as a matter of course; that a petition for removal is a process, and that we have as much right to amend as you have to amend a summons or process.

"Mr. Ammen: Is this an argument, your Honor? I thought he was just presenting the emergency.

"Mr. Mayer: This is the emergency, and your Honor need not be reminded of it. We have been tricked in this litigation. When your Honor granted the adjournment heretofore at the instance of the same solicitor who asks it now, and he put his request upon an unfair and untrue basis by saying he did not represent Mr. Harding—your Honor interrupted, and I want-

ed to read where he swore that he did represent Mr. Harding in the second suit—I have not the transcript here. Now, we want to avoid that. If, your Honor, an application for leave to amend is not good, a motion can be made to vacate it. They are not prejudiced; we may be prejudiced. We do not know what motion may be presented tomorrow or the next day. Mr. Harding is 80 years old. If your Honor would read the affidavit upon which this motion is based, we do not think you would entertain a suggestion of continuing it. We have exhausted investigation in Illinois and in California, and we have the evidence here that the statement in his bill was false, that he never was a citizen of California, never paid taxes in California, never was a householder, never registered, never had his name in the directory, city or telephone, and only went there at short intervals for the purpose of securing a divorce, which was reversed by the United States Supreme Court; and that since 1902, has never put foot in California.

"Mr. Ammen: Now, the question of the emergency. Is that going to the question of emergency?

"Mr. Mayer: They have a copy and that is the motion.

"The Court: Do you mean the allegation in the petition of the defendant presented to the state court in the suit of Harding against the Corn Products Company and others, and then the allegation that the complainant in that state court suit was a citizen of California?

"Mr. Mayer: Yes, your Honor, and they have a copy of it.

"The Court: And that that allegation followed the bill of the complainant in the state court?

"Mr. Mayer: Word for word, and the affidavit is here presented by myself, your Honor,

showing the misinformation contained in the language of that petition for removal, obtained from the complainant's own bill.

"Mr. Ammen: Now, I want to be heard on this question of emergency, your Honor, if this motion was to be heard. I am appearing here specially first to object to its being heard and asking a postponement; and if it is to be heard, why, I want to put in proof under my special appearance. So I insist upon its being postponed for reasons that I will state fully. I appear only specifically for this purpose. Mr. Mayer has made some very serious charges here which I will show to your Honor are untrue—made them against me. I will show to your Honor they are untrue, from the record.

"Mr. Mayer: Now, if it pleases the court, our amending petition leaves the issue, if they want to meet an issue of facts. He cannot be heard in contradiction of the application to amend. If the amendment controverts the citizenship it is an issue of fact presented which is triable before a court, a jury or before a master. But we object, your Honor. Now, we would not object if the granting of our motion would prejudice them. The refusal of your Honor to entertain the matter now may prejudice us. You ask us in what way; the old story that the burned child fears the fire is the only answer that I can make. We have been burned by the conduct of the defendants in this litigation by trusting to their honor, to their integrity—and I am speaking clearly to the record as to what transpired. Now we urge your Honor to grant us our motion. And if, when Mr. Harding comes back, he can show to your Honor that this motion is ill-advised, he can move to vacate it; but by granting the motion, your Honor, our status is fixed in this record and nothing that Mr. Ammen or his associates can do can undo that record. We have relied heretofore, your Honor, upon mat-

ters remaining in *statu quo*. We have been ignominiously deceived, and your Honor, I believe, is the witness to what I am saying and to its correctness.

"The Court: The trouble about granting this motion that you now make and that you are asking to be acted upon now is this: The motion is for the amendment of the petition in respect of a matter of fact, a matter of substance. The fact of the residence of the complainant's is a matter, in respect of which, if I must take notice, he would have the right to be heard as a witness, either by affidavit, or a witness in open court; and, if the motion to amend the petition is made in his absence, and he appears here by his counsel, no matter what the representation of his counsel may be, as to whether or not he is his counsel, or whether or not he represents his client, it seems to me that I ought to let the matter rest if the man is going to be here in a few days or so, that he may take the stand and testify.

"Mr. Mayer: Your Honor will pardon me. I presume that this question in its present form has never been before your Honor. I assume so, otherwise your Honor would not have indicated the expression that you expressed. The practice in the law is—suppose that this original petition for removal had stated that he was a citizen of Illinois. The bill states citizen of California; the original petition states citizen of Illinois, the petition for removal. All that the amendment does is to put into the petition for removal a statement that he was a citizen of Illinois. That does not bind him. You cannot hear his affidavit now, your Honor, in opposition to the motion to amend. You could take testimony after there is an issue of fact made. His bill alleged California citizenship, the petition for removal alleging Illinois citizenship. And your Honor will perceive his bill is not

sworn to in which he alleges he is a citizen of California then. Testimony can be taken before a Master, a jury or a court, but courts never hear testimony upon an application to amend because the amendment does not bind the complainant; the amendment nearly puts into the pleadings what we claim which we say should be there when the petition was filed. The issue of fact thus made by their bill is tried, as any other issue before a court, jury and before a Master, and I suggest permitting here an affidavit from Mr. Harding, that would be trying the issue before there is an issue made; the issue should be made. If Mr. Harding has the hardihood to take the stand and contend that since 1902 he has not been a resident or citizen of Illinois, in fact continuously since 1862, or his residence is given there, we have living witnesses at our call. But then your Honor will hear witnesses. Usually it is referred to a Master or court—in open court—and their testimony is taken away by commissioners. But your Honor, on application for leave to amend, because that leave to amend does not bind them, it simply enables us to put our pleadings in shape. Suppose, your Honor, it was an application for leave to amend a return on a process, or to amend a subpœnæ or bill, or an answer, that amendment would not bind the other side, and you would not permit the other side to controvert the fact sought to be inserted in the answer or writ. You would say you can make your issue in that answer or writ by replication or motion. And that is the practice, your Honor.

"The Court: In view of the nature of the injunction—when is your client coming back?

"Mr. Ammen: Your Honor, he would like to stay for two weeks, but we will have him back.

"The Court: Where is he now?

"Mr. Ammen: He is in one of the New England states.

"Mr. Mayer: Where is he? Which one?

"Mr. Ammen: That doesn't make any difference, unless the court would like to know more definitely.

"Mr. Mayer: I would like to know definitely.

"The Court: Do you intend to make any move in this case before the court enters his order to dispose of defendant's application to amend the petition—

"Mr. Ammen: I claim—

"The Court: Will any motion be made in this case before the court enters the order disposing of this motion, the defendant's petition to remove?

"Mr. Ammen: In this present case, the Harding case?

"The Court: Yes.

"Mr. Ammen: I don't contemplate such a motion and can't think of any that can be.

"The Court: Will any motion be made prior to disposing of the petition?

"Mr. Ammen: Not unless it is presented to your Honor; that is enough. If it should be presented to any other Judge before it is presented to your Honor—

"The Court: Proceed with the motion. I will hear you on your motion to amend this petition.

"Mr. Ammen: Your Honor, won't you allow me to reply to this question?

"The Court: Will any motion be presented to any court in the case of Harding against the Corn Products Company and others?

"Mr. Ammen: Not if your Honor now says not; no.

"The Court: I am not saying anything.

"Mr. Ammen: Very well, then; I say no.

"The Court: I am saying to you whether any motion will be presented to any court—

"Mr. Ammen: No, sir.

"The Court: In the case of Harding against the Corn Products and others—

"Mr. Ammen: It will not.

"The Court: —before this court disposes of the defendant's motion to—petition for removal?

"Mr. Ammen: It will not.

"Mr. Mayer: Now, your Honor, that isn't quite fair. How about the motion in the first case to dismiss? We do not know what the Circuit Court of Appeals is going to do.

"Mr. Ammen: There has been a most astonishing statement made here about what has been taking place in other cases which your Honor has taken as true—most astonishing.

"The Court: I haven't anything to do with those cases. Do you propose to proceed in this case within two weeks before Mr. Harding gets here?

"Mr. Ammen: Not that I know of. I don't think there is anything we can do in this case. We certainly have no motion in contemplation before he gets here, and I think I may say no.

"The Court: Do you say it?

"Mr. Ammen: Yes, I do.

"The Court: No motion will be made in this case?

"Mr. Ammen: Until this matter can be heard.

"The Court: Until the court disposes of the defendant's motion to amend the petition to remove?

"Mr. Ammen: I say that.

"The Court: No motion will be made in this case.

"Mr. Ammen: That is right.

"The Court: That is, in the case of Harding against the Standard Oil Company *et al.*?

"Mr. Ammen: Yes, sir.

"The Court: Now, when will the complainant be here?

"Mr. Ammen: We can have him here by a week from today.

"The Court: I will be here another week, but will be gone for three weeks after that.

"Mr. Ammen: When will your Honor be back?

"The Court: I will be here another week.

"Mr. Ammen: We can have him here next Friday?

"The Court: A week from today?

"Mr. Ammen: All right; not later than Friday, a week from today. Then that is the date at which it can be heard?

"The Court: Yes.

"Mr. Ammen: How long will the court be gone; for three weeks?

"The Court: Probably three weeks.

"Mr. Ammen: We would rather have it heard then than to have it delayed, if your Honor will fix it for next Friday.

"The Court: Yes, in view of the nature of the amendment I will continue this motion until next Friday.

"Mr. Mayer: Will your Honor pardon me? I don't take issue with what your Honor has indicated, but so that there can be no mistake, do I understand that there is a stipulation made in open court that in view of your Honor continuing our motion for leave to amend the petition for removal in *Harding* v. *The Standard Oil Company et al.*, that no motion, either in this case or in the case of the *Real Estate Loan & Trust Company* v. *The Corn Products Company et al.*, will be made on behalf of the Real Estate Loan & Trust Company or George F. Harding or any of his associates, in this or any other court, until this motion for leave to amend the petition for removal has been heard and disposed of?

"The Court: That is the understanding.

"Mr. Mayer: Is that correct, Mr. Ammen?

"Mr. Ammen: No—that is correct except that it must be understood that it is under special appearance. We do not want it to be understood to be a general appearance by a general stipulation that we might waive our objections to the jurisdiction of the court in the *Harding* case. This we rely upon very much. But it is under this special appearance; we have no hesitancy in making that statement.

"The Court: Well, I am now dealing with you in your capacity as a member of the bar, and I am getting pretty near tired of wasting my time on these technical propositions when I am dealing with officers of the court.

"Mr. Ammen: We do not think this is a technical proposition. We think it is very vital.

"The Court: I don't care whether you are here specially in this case or whether you are simply here in this court as an officer of the court in court when something happens. Do you mean to say to me that in neither of these two cases any motion will be made in any court on behalf of the complainant in either of those two cases?

"Mr. Ammen: Yes, sir; I have already stated it.

"The Court: Until I enter an order disposing of the defendant's motion to amend the petition to remove the *Harding* case?

"Mr. Ammen: I have already stated it and I repeat it.

"The Court: And that is on consideration of my continuing the application to amend that petition until next Friday morning?

"Mr. Ammen: Yes, sir, and upon the condition imposed by the court.

"The Court: Yes.

"Mr. Mayer: Now, your Honor, I will ask leave to file the motion.

"Mr. Ammen: Now——

"Mr. Mayer: Pardon me, please. May we

have leave to file the motion with the accompanying papers attached?

"Mr. Ammen: I don't know that there is any need to file it.

"Mr. Mayer: We would like it.

"The Court: The court rules require the motion to be in writing. Call your next motion. In this case of *Harding* v. *The Corn Products Company* I desire counsel to each give his adversary by 12 o'clock Thursday on paper a memorandum of any and all authorities that you desire to call the attention of the court on Friday morning.

"In the United States Circuit Court in and for the Northern District of Illinois, Eastern Division Thereof.

"George F. Harding
vs.
Standard Oil Company of New Jersey *et al.*
No. 28-865.

"Before the Honorable K. M. Landis, at 2 o'clock P. M., April 16, 1909, the following proceedings were had in the above entitled cause:

"Mr. Mayer: We have handed to the Clerk the order, your Honor, pursuant to your Honor's decision this morning.

"The Court: Have you seen this?

"Mr. Ammen: Yes, your Honor. I don't think there is any need of any order, but if there is to be any entered I would like to be heard very briefly upon a few points in it.

"Mr. Mayer: We press that the order be entered. We don't want any more order in *nubibus*.

"Mr. Ammen: If I have an opportunity to correct any of the misstatements made by Mr.

Mayer this morning I am glad of the opportunity to do it.

"The Court: I think it is not necessary.

"Mr. Ammen: I want to be heard a moment upon one question. Have you got the order before you?

"The Court: Yes.

"Mr. Ammen: Your Honor spoke this morning about this question of special appearance being technical, and that is no doubt so in many instances. But here it is a very vital matter, and these gentlemen very well know it.

"The Court: What I had in mind when I said that was this: You have been in before me a number of times generally for the complainant and with the complainant, in the case of *Harding* v. *The Corn Products Company*.

"Mr. Ammen: Merely on the motion for remand.

"The Court: Yes, in connection with the other case. You have been here in open court repeatedly, as has Mr. Harding, the complainant.

"Mr. Ammen: I understand.

"The Court: And presented to me matters which only could be presented by counsel for the complainant in that case.

"Mr. Ammen: The only thing that we were urging in the *Harding* case was a motion for remand.

"The Court: I will have to make short work of this. Why don't you file your appearance?

"Mr. Ammen: I have, but I want the record to show that that is the appearance upon which it is done. Your Honor gave quite a good deal of time to Mr. Mayer this morning, and I think I ought to be heard.

"The Court: I will hear you, and you need not remind me that I have heard your adversary. Rather than have you go out here and

even unjustly say that I will not hear you I will sit here all the afternoon.

"Mr. Ammen: Your Honor just said that you would make short work of it; and, so far as I am concerned, you may make short work of it.

"The Court: I will hear you.

"Mr. Ammen: I want to say in justification that when the question is one of diverse citizenship a general appearance in the case, after removal, may be fatal to a motion to remand. There is no doubt about that. So that I want to guard against a general appearance in this case. Our motion to remand, Mr. Harding filed himself; but in that motion he very carefully limits his appearance to the purpose of the motion, insisting that this court has no jurisdiction. Now, I limited my appearance in writing this morning to the same effect. This order is drawn so as to show a general appearance by me. Now, I don't want it worded that way.

"Mr. Mayer: It is not that way, your Honor. If your Honor will read the last two lines of the first paragraph (handing paper to the court).

"The Court: This morning you stated that you appeared specially only to ask that I should not hear it; that you were not attorney for the complainant.

"Mr. Ammen: Your Honor, I stated that I was not attorney of record in this particular *Harding* case, which is true. The only thing that is material, so far as that is concerned——

"The Court: Well, your appearance is now for the purpose of questioning the propriety of the removal, not desiring that it shall recite that you appear generally here?

"Mr. Ammen: That is right, and my appearance is stated in writing. We regard it as very important.

"The Court: Let me see it—(The special ap-

pearance filed this morning was here handed to the Judge).

"The Court: I do not see any occasion. I do not care for a history of the litigation on this motion, but I now give you leave to withdraw this paper and leave to file a special appearance, which you can do in two lines.

"Mr. Ammen: If your Honor will leave that intact I will give your Honor another copy, this one, instead of the one that is filed.

"Mr. Mayer: No, I would rather you used the one that has been filed. You are sliding a lot of things in here that we know nothing about.

"The Court (reading): 'I, William J. Ammen * * * the papers in said cause.'

"(The court here struck out of said appearance filed this day certain parts thereof with a pen.)

"Mr. Ammen: I think that is sufficient, but at the same time I would prefer to have it stand as it was, if your Honor will permit it. One other thing in this order, if your Honor will look at it; I have only made some slight changes; the first thing is in the sixth line where it says 'Due notice of said motion having been heretofore given.' I would like to have added 'to said Ammen.' That is true; no other notice was given.

"Mr. Mayer: We served notice upon Mr. Ammen and Mr. Harding. Mr. Ammen accepted service for Mr. Harding.

"Mr. Ammen: I did not accept notice for any one. The notice was given to me, 'to said Ammon.' I would like to have stated there.

"The Court: 'Due notice of said motion having been heretofore given to said Ammen as solicitor for complainant.'

"Mr. Ammen: I think that is all right.

"The Court: Well, that is true, isn't it?

"Mr. Ammen: Well, I think that is all right.

I have stated what my views on that are. At the end of that same paragraph——

"The Court (reading): 'And the said George F. Harding now appears in open court by William J. Ammen, his solicitor, who, however, protests that he appears and appears specifically only for the purpose of this motion.'

"Mr. Ammen: I want 'and appears' out, and I would like to have this added, 'As stated in his written appearance this day filed herein.'

"Mr. Mayer: I object to that. The written appearance speaks for itself.

"Mr. Ammen: I want it to appear here that my appearance now is under that written appearance, and not a general one.

"The Court: That may be added. Go ahead.

"Mr. Ammen: On the next page it recites that 'the hearing of said motion to amend is hereby continued before this court until Friday, April 23, 1909, at 10 o'clock a. m., or as soon thereafter as the matter can be heard. The stipulation above referred to and upon which said continuance is granted is as follows.' Now, I would like your Honor to add this language, 'Said stipulation upon the part of said Ammen—the making of said stipulation upon the part of said Ammen being imposed by the court as a condition to the granting of said continuance.' I think that is very fair and the truth.

"Mr. Mayer: I object.

"Mr. Ammen: I was perfectly willing to make it as a condition.

"The Court: I will now wipe all this out. Are you willing that I should hear this and dispose of the matter save only as you are in duress by the——

"Mr. Ammen: No, it is not duress. Change that in any way you want; I am quite willing to make it, but I want it understood that it is with a view of getting a continuance, not a bargain. I want the truth. I think the court was

reasonable in his requirements, but I think the other side ought to be in a similar situation. I think the record ought to show that I made it in order to have the objection to the continuance removed. The argument made by Mr. Mayer was that we will do this, we will do that, and I said very well. Now, they say that I made a stipulation, and I have just added that the making of said stipulation upon the part of said Ammen was imposed by the court as a condition to the granting of said continuance. Change it this way, if your Honor wishes to get rid of the suggestion of duress; I didn't mean that; all I want to show is that I made this stipulation in order to overcome in the mind of the court the objection made by Mr. Mayer that we might make some moves. That was all. It was in connection with the continuance, and the court said, 'Will you maintain the *status quo?*'

"The Court: It doesn't make any difference to me whether that is in there. There is no substance in it. Is there any objection?

"Mr. Mayer: Why, it states on the first page, 'Thereupon, in consideration of the stipulation hereinafter referred to, entered into by said William J. Ammen in open court, the hearing of said motion to amend is hereby continued.'

"Mr. Ammen: Turn back to the language that he has read and put in these words, 'in order to avoid the objections to said continuance.' Now, that is all I want, if you will put it in there.

"The Court: Well; go ahead.

"Mr. Ammen: That is on the last line of the first page, your Honor.

"The Court: Yes.

"Mr. Ammen: Now, I would like your Honor to add an objection on the last page to the filing of these papers, for this reason: Mr. Mayer says, 'That leave be and the same is hereby given to said Corn Products Manufacturing

Company to file herein said motion to amend, together with all affidavits and papers attached thereto, and accompanying the same. Whereupon said motion, with said affidavits and papers, is now here filed in open court.' Although not in the form of a formal amendment to petition for removal has been treated as bringing before the court the facts, and to be considered as a part of the petition, and in effect an amendment.

"The Court: What do you mean?

"Mr. Ammen: All I want is an objection to the filing of those papers added. You could put it in this way, your Honor, if you want, on the bottom of the last page—well, your Honor was writing it; I just wanted to shorten it is all.

"The Court: 'Complainant objects to the filing of the affidavits and papers as above; objection overruled; complainant excepts.'

"Mr. Ammen: Ought not Mr. Mayer also to assure the court to maintain the *status quo?*

"Mr. Mayer: Mr. Mayer will not so assure the court. We will move in any direction that is legal and proper.

"Mr. Ammen: Your Honor has enjoined the bringing up of our motion to remand, filed in December, 1907. We have not been able to bring it up; before we can bring the motion up they are interjecting others. Now, is it fair for your Honor to impose this upon us and allow them—

"The Court: I will dispose of all these matters if you will go on with the argument.

"Mr. Mayer: I am ready.

"Mr. Ammen: I don't want to take it up in the absence of Mr. Harding. Your Honor says, 'Motion to amend, together with all affidavits and papers attached thereto and accompanying the same,' and leave is granted to be filed. I have examined those which are attached; I would like to know if there are any that accompany that are not attached?

"The Court: Everything has been filed, I take it.

"Mr. Ammen: The clerk says that is the only one filed.

"Adjourned."

EXHIBIT E.

SPECIAL APPEARANCE AS CHANGED BY JUDGE LANDIS.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,
In and for the Northern District of Illinois,
Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford, and E. P. Wemple,
Defendants.
} No. 28,865.

I, the undersigned, William J. Ammen, hereby enter my special appearance as solicitor for the complainant in the above entitled cause for the purpose *only* of objecting to the hearing or allowance of the motion of said Corn Products Manufacturing Company for leave to amend the removal petition, or removal papers, in said cause, ~~the contention of the said complainant being as stated in his motion~~

~~filed in said cause on December 23, 1907, to~~ remand the same to the state court, that this cause has never been properly removed to this court, and is now pending, under the law, in the Superior Court of Cook County, Illinois, and that this court has no jurisdiction in said cause or over the said complainant therein, and that the said motion to remand to the state court must be allowed whenever that motion can be heard, the said Harding having repeatedly heretofore asked this court to hear and allow the said motion to remand, but this court having heretofore and up to this time declined to hear the same, and having actually enjoined the bringing on of the same to be heard as shown by the record in the suit of the *Chicago Real Estate Loan & Trust Company* v. *The Corn Products Company, and others,* in the suit in chancery, No. 28695, pending in this court, to which record reference is hereby made; and in entering this appearance all the rights and claims and contentions of the said complainant stated or referred to in the said motion to remand are hereby renewed and saved and reserved by and ~~in behalf of the said complainant.~~

WM. J. AMMEN,
Solicitor for said George F. Harding.

NOTE: The change in the above in ink was made by Judge Landis, on April 16, 1907, as shown by the shorthand reporter's transcript of that date.

EXHIBIT F.

Order of April 16, 1909.

In the United States Circuit Court,
In and for the Northern District of Illinois,
Eastern Division Thereof.

George F. Harding,
vs.
Standard Oil Company of New Jersey *et al.* } No. 28,865.

Now comes on to be heard the motion this day presented herein by the Corn Products Manufacturing Company, one of said defendants, asking for leave to amend, as prayed for in said motion, the petition for removal in said cause, heretofore filed herein by said Corn Products Manufacturing Company, and due notice of said motion having been heretofore given to Wm. J. Ammen, solicitor for complainant, and the said Corn Products Manufacturing Company now appears in open court by Levy Mayer and William J. Calhoun, Esqs., its solicitors, and the said George F. Harding now appears in open court by William J. Ammen, his solicitor, who, however, protests that he appears specially only for the purpose of this motion, as stated in his written appearance this day filed herein.

Whereupon said counsel for said Corn Products Manufacturing Company press said motion for disposition, and said William J. Ammen, counsel for said George F. Harding, objects to the hearing of said motion at this time because of the absence from

the City of Chicago of said George F. Harding, the complainant; thereupon, in consideration of the stipulation hereinafter referred to, entered into by said William J. Ammen in open court, in order to avoid the objection to said continuance, the hearing of said motion to amend is hereby continued before this court until Friday, April 23, 1909, at 10 o'clock A. M., or as soon thereafter as the matter can be heard. The stipulation above referred to and upon which said continuance is granted, is as follows:

Said William J. Ammen, as counsel for said George F. Harding, complainant in this suit, and as counsel for the Chicago Real Estate Loan & Trust Company, complainant in the suit against Corn Products Company *et al.*, pending in this court as Number 28695, and as counsel for George F. Harding, Jr., William J. Ammen and A. B. Joyner, now here stipulates that no motion of any kind shall or will be presented or made on behalf of said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, or any or either of them, in said cause, or in the case of the *Chicago Real Estate Loan & Trust Company* v. *Corn Products Company*, either in this court, before any judge thereof, or in the Circuit Court of Appeals, in and for the Seventh Circuit, to which an appeal was heretofore taken from an injunction heretofore entered in this court in said Chicago Real Estate Loan & Trust Company case, until the said motion of said Corn Products Manufacturing Company to amend its said petition for removal has been heard and decided of record by this court.

It is further ordered that counsel for said George

F. Harding and for said Corn Products Manufacturing Company shall deliver to each other, respectively, not later than 12 o'clock noon of Thursday, April 22, 1909, a list of all court decisions upon which they may respectively rely on the hearing before this court of said motion to amend.

It is hereby further ordered against the objection of said Ammen that leave be and the same is hereby given to said Corn Products Manufacturing Company to file herein said motion to amend, together with all affidavits and papers attached thereto and accompanying the same.

Whereupon said motion, with said affidavits and papers, is now here filed in open court.

Complainant objects to filing of affidavit and papers as above. Objection overruled. Complainant excepts.

Chicago, April 16, 1909.

EXHIBIT G.

ORDER OF MAY 15, 1909, GRANTING LEAVE TO AMEND REMOVAL PETITION.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

May 15, 1909.

IN THE UNITED STATES CIRCUIT COURT

IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION THEREOF.

Present: Hon. A. L. Sanborn, District Judge.

George F. Harding,
vs.
Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. C. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford and E. P. Wemple. } No. 28,865.

There now comes on to be heard the motion of the Corn Products Manufacturing Company, one of said defendants, filed herein on April 16, 1909, asking for

leave to amend its petition of removal, contained in the transcript of record filed herein by leave of court on November 6, 1907; and the court having considered said motion to amend and the affidavits and consents accompanying said motion and also filed herein, and the objections and answer to said motion of said George F. Harding, filed herein, and the reply filed herein by said Corn Products Manufacturing Company to said objections and answer; and the court having heard the arguments of Levy Mayer and William J. Calhoun, Esqs., solicitors and of counsel for said Corn Products Manufacturing Company, in support of said motion, and the arguments of George F. Harding and William J. Ammen, Esqs., solicitors and of counsel for said George F. Harding, in opposition thereto, and being fully advised in the premises, FINDS, that said motion for leave to amend should be granted, as is in this order directed.

WHEREFORE, the premises considered, it is hereby ORDERED and ADJUDGED that leave be, and the same is hereby given to said Corn Products Manufacturing Company to amend its said petition by inserting in lieu of the sentence contained in said petition,

> "George F. Harding was, and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country,"

the following:

> "George F. Harding was on October 19, 1907, and continuously since has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago in said state, and that he was not on October 19, 1907, and at no time since has been and is not now a citizen of any other state or a resident of any other city."

EXHIBIT H.

MOTIONS OF MAY 22, 1909, TO STRIKE "REPLICATION" FROM THE FILES, &C.

UNITED STATES CIRCUIT COURT,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey *et al.*,
Defendants.

In Chancery
No. 28865.

Now comes the complainant (appearing specially as heretofore), and moves the court, *first*, to set aside any order that may have been entered or directed herein, if any, permitting an amendment to the Removal Petition herein and, *second*, to strike from the files herein the document purporting to be "replication" to the objections and answer of complainant to the petition for leave to amend removal petition in said cause, and for reasons states the following, among others, viz:

First: That it is not a replication at all either in form or in substance, and it was filed under false pretenses, as to its being a replication, without being submitted for examination, or knowledge of its character, or submitted to complainant, or counsel, and without prior leave of court, and without submission and inspection by the court, or parties, and was not made, or presented, until after the hearing had been almost concluded, and after the hearing had been

entirely concluded and arguments concluded on the part of complainant, and within a few hours before the conclusion of a hearing that had occupied nearly three days, and more than that time after the said answer had been filed and the pleadings treated as concluded. Further the said pretended replication puts on the files, and into the record (it may be supposed by the reviewing courts to whom this case may be submitted), a series of alleged documents, or rather portions of the same, garbled and selected in fragments meant wrongfully to affect the mind of the court to the prejudice of complainant, and really untrue, and which may and will, if remaining on the files, be wrongfully and untruthfully used to the injury and prejudice of complainant, and complainant submits that such a paper is in violation of orderly practice and pleading in form and substance, and time of submission, and a piece of trickery to escape investigation and reply, and unworthy and offensive, and hitherto unknown in this court; and such an abuse of sound and orderly practice deserves to be checked at the outset, as both improper, unlawful, and impertinent, and in contempt and gross violation of sound and orderly pleading, and practice, and your complainant will ever pray, etc.

GEORGE F. HARDING,
WM. J. AMMEN,
Appearing specially for Plaintiff.

ORDER OF JUNE 12, 1909, DENYING ABOVE MOTION.

George F. Harding
vs.
Standard Oil Company of New Jersey, *et al.* } 28,865.

The parties appearing again by counsel, the complainant in person and by his solicitors, the defendant, the Corn Products Manufacturing Company, by Mr. Levy Mayer, its solicitor, and now comes on to be further heard the motion of the complainant to set aside and vacate the order heretofore entered, giving leave to amend the petition for removal herein and to strike from the files the so-called "replication" to complainant's objections and answer to the petition for leave to amend said petition for removal, which motion was heard in part and submitted on the 22nd day of May, 1909, and which motion complainant is hereby given leave to file *nunc pro tunc* as of said May 22, 1909, and the court having heard the arguments of counsel and being now fully advised in the premises, it is ordered and adjudged that said motion be, and the same hereby is, overruled and denied.

EXHIBIT I.

AMENDMENT TO PETITION FOR REMOVAL, FILED JUNE 14, 1909.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION. } ss.

IN THE UNITED STATES CIRCUIT COURT
IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION THEREOF.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. C. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford and E. P. Wemple,
Defendants. } No. 28,865.

AMENDMENT TO PETITION FOR REMOVAL.

Now comes Corn Products Manufacturing Company and by leave of court first had and obtained by an order entered herein May 15, 1909, amends its

petition for removal contained in the transcript of the record filed herein by leave of court on November 6, 1907, by inserting in lieu of the sentence contained in the first paragraph of said petition for removal,

> "George F. Harding was, and continuously since has been and now is a resident and citizen of the State of California and a citizen of no other state or country,"

the following:

> "George F. Harding was on October 19, 1907, and continuously since has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago in said state, and that he was not on October 19, 1907, and at no time since has been and is not now a citizen of any other state or a resident of any other city."

CORN PRODUCTS MANUFACTURING COMPANY,
J. M. SHEEAN,
By CALHOUN, LYFORD & SHEEAN, and
LEVY MAYER,
Its Solicitors.

LEVY MAYER,
Of Counsel.

EXHIBIT J.

ORDER OF DISMISSAL IN OBEDIENCE TO MANDATE.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,
In and for the Northern District of Illinois,
Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,	
vs.	In Chancery.
Corn Products Company, Corn Products Refining Company, and others.	No. 28,695.

Now come the parties hereto by their respective solicitors herein, and the MANDATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT, having this day been filed herein, it is hereby ORDERED, ADJUDGED, AND DECREED, pursuant to said mandate, that, on the motion of the said complainant herein, the Bill of Complaint herein, be, and the same is hereby dismissed, without prejudice, and without prejudice to the right of Joy Morton, cross-complainant herein, to prosecute his cross-bill herein, all questions in relation to costs in this court, or in the said United States Circuit Court of Appeals being hereby expressly reserved for future consideration and decision; and it is further hereby ordered, pursuant to said mandate, that the decretal order entered herein by this court under date of

December 13, 1907, and reversed by the said United States Circuit Court of Appeals, as shown in and by said mandate, be, and the same is hereby set aside, vacated, and annulled, and the said petition (or motion) of said Corn Products Refining Company filed herein, on November 4, 1907, is hereby dismissed pursuant to said mandate.

EXHIBIT K.

ORDER OF JULY 9, 1909, DENYING MOTION TO REMAND, AS PRESENTED IN PETITION.

United States Circuit Court
Northern District of Illinois,
Eastern Division.

George F. Harding
vs.
Standard Oil Company of New Jersey, *et al.*
} Chancery No. 28,865.

Complainant having appeared specially herein, and for the purpose only of moving to remand this suit to the state court on his motion to remand filed herein December 23, 1907, and for the same order, which he claims he was entitled to have made December 26, 1907, when he moved the court to grant said motion of December 23, 1907, William J. Ammen appearing specially for the plaintiff, and Mayer, Meyer & Austrian for defendants.

And it appearing to the court that between December 1, 1907, and December 13, 1907, complainant inquired of the Judge of this court, after its adjournment for the day, whether he would hear a motion to remand this suit to the state court, which inquiry was made without any motion therefor, and not in the presence of, and without the knowledge of the defendants or their attorneys; and complainant was then and there informed by said Judge that he should give notice of any motion he desired to make, and shortly thereafter the said Judge gave direction

to the deputy clerk of this court to inform complainant and his attorney, Mr. Ammen, that the court deemed it proper to postpone any hearing or action on the matter of remanding this suit until a certain motion for injunction staying proceedings by complainant in this suit, then pending in another suit in this court, entitled Chicago Real Estate Loan and Trust Company against Corn Products Company and others, and being No. 28,695 in this court, had been disposed of; and such message was given accordingly. No motion to remand this suit was made until December 23, 1907, when a written motion to remand the same was filed by complainant, and the same was first called to the attention of the court December 26, 1907, after the court had directed the entry of an order in said suit No. 28,695, enjoining complainant from further prosecuting this suit, No. 28,865, or taking any steps or proceedings therein, which injunction order bears date December 13, 1907. Upon the attention of the court being called to said motion to remand, and the court having been requested to pass upon it, and to make an order overruling it, or other order disposing of it, the court refused to hear the motion to remand, or make any order thereon, for the reason that all proceedings by complainant in this suit had been stayed and restrained by said injunction entered in suit No. 28,695.

And it further appearing to the court that by reason of the making of said injunction complainant had no opportunity to have said motion to remand heard until June 30, 1909, when the mandate of the United States Circuit Court of Appeals for the Seventh Circuit was filed in said case No. 28,695, directing the re-

versal of the said injunctional order of December 13, 1907, so entered December 26, 1907.

Wherefore, upon the record herein, and the facts herein recited, on motion of counsel for defendants, it is ordered by the court that the said motion to remand this suit to the state court be, and the same is, hereby denied.

EXHIBIT L.

ORDER OF JULY 9, 1909, AS TO TAKING OF PROOF ON ISSUE OF CITIZENSHIP, AND DENYING LEAVE TO FILE PETITION PRESENTED JUNE 30, 1909.

In the Circuit Court of the United States,
Northern District of Illinois,
Eastern Division.

Friday, July 9, 1909.

Present: Honorable Arthur L. Sanborn, District Judge.

George F. Harding
vs.
Standard Oil Company, *et al.* } 28,865.

This cause coming on to be further heard upon the question of the citizenship of said George F. Harding, the complainant, appearing in person and by his solicitor, William J. Ammen, the defendants being represented by Mr. Alfred Austrian, of Messrs. Mayer, Meyer & Austrian, and the court being fully advised,

IT IS ORDERED that said defendants close their proofs on said issue by September 15th next, complainant to take his proofs by the 15th of November next; the defendants to have thirty days thereafter for rebuttal, or thirty days after the complainant shall have notified said defendants that said complainant's testimony had been closed; and the testimony of said Harding shall be taken in open court on the hearing of said issue.

The motion of the complainant for leave to file petition offered is hereby denied.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

In the United States Circuit Court, in and for the Northern District of Illinois, Eastern Division thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, *et al.,*
Defendants.
} In Chancery, No. 28865.

ANSWER TO REMOVAL PETITION AS AMENDED.

Now comes the said complainant, George F. Harding, appearing specially herein, as heretofore, and protesting and objecting as in his motion to remand filed herein on December 23, 1907, and as in his objections and answer filed herein to the petition or motion to amend the removal petition herein, and as done on the hearing of the said petition for leave to amend, and otherwise of record herein, that this court is wholly without jurisdiction of or in this cause, or over or against this complainant, and still insisting that this court has not and never had any jurisdiction of or in this cause, or over or against this complainant in said cause, or any authority or power therein except to remand the said cause to the state court, and insisting that the said cause has been improperly and unlawfully removed from the state court to this court, and improperly and unlawfully held in this court up to the present time, and

saving, and reserving, and preserving all and every of his objections and exceptions to the several orders of this court in this cause, and every of them, and every part thereof, and insisting that the same, including, particularly, the order permitting the amendment to the removal petition in said cause, were and are, respectively, without power or authority or jurisdiction on the part of this court, and, therefore, wholly null and void, and insisting and protesting that the said amendment filed herein, on June 14, 1909, to said removal petition, was and is unauthorized and improper, and that this court has no jurisdiction of or in this cause, or of or over this complainant, notwithstanding the filing of the said amendment by leave of court herein, and, particularly, saving and reserving and preserving to this complainant his objections and contentions set forth in his petition presented to this court in this cause on June 30, 1909, and insisting that the prayer thereof should then have been and should now be granted by this court, and insisting further that this court should not have allowed the said petition for leave to amend the removal petition in this cause, and granted such leave at any time, and particularly before the filing of the mandate of the United States Court of Appeals in the suit in chancery No. 28,695, in this court, which mandate was not filed in said cause until June 29, 1909, and had been stayed up to May 19th, on motion of appellee therein, this complainant saving and reserving and preserving all and every of his rights and contentions, aforesaid, and to the end that such proceedings may be had in this cause as will clear away all obstacles against

this complainant's applying to the Supreme Court of the United States for a mandamus to compel a remand of this cause to the state court, for answer to the said petition for removal as amended herein on June 14, 1909, this complainant, George F. Harding, represents and states and shows to the court that it is not true that this complainant, George F. Harding was, on October 19, 1907, or at any time since that date, a citizen and resident of the State of Illinois, or a citizen and resident of the City of Chicago, in said State of Illinois, and it is not true that said George F. Harding was not on October 19, 1907, or at any time since that date, a citizen or resident of any other state or city, but, on the contrary, this complainant, George F. Harding, represents and states and shows to the court, that this complainant, George F. Harding, was, on October 19, 1907, and continuously since has been and now is a citizen of the State of California, and a resident of the said State of California, and was not on October 19, 1907, and at no time since that date has been, and is not now a citizen or resident of any other state or country than the said State of California.

And by way of further answer to the said removal petition as thus amended, this defendant represents, and states, and shows to the court that the averments in the said removal petition, as thus amended, namely, the averments that "George F. Harding was on October 19, 1907, and continuously since has been and now is a citizen of the State of Illinois, and a resident of the City of Chicago in said state, and that he was not on October 19, 1907, and at no time since

has been and is not now a citizen of any other state or a resident of any other city," were and are entirely untrue.

And this complainant prays that there may be a speedy hearing and decision of such issue of citizenship, and a remand of this cause to the state court by the order of this court, and particularly, that such action may be taken as will enable this complainant to apply promptly to the Supreme Court of the United States, if need be, for a mandamus to compel a remand of this cause to the state court, and the defendants herein thus prevented from further delaying and defeating justice herein, as has been done by them wrongfully and unlawfully ever since the beginning of this suit; and this answer is presented by this complainant, and a trial of the said issue of citizenship requested and demanded by this complainant, without intending, in any way, or to any extent to waive his said motion to remand heretofore filed herein, or any part thereof or his rights by reason of any decision or action of court thereupon and without intending, in any way, or to any extent to waive his said petition presented to this court in this cause on June 30, 1909, and solely in order that this complainant may speedily obtain a remand of this cause to the state court, this court having heretofore refused a hearing thereof, and having even enjoined the bringing on of the same to be heard, and the mandate showing a reversal of such injunction having been filed, as aforesaid, on June 29, 1909, thus leaving this complainant free, for the first time, to move for a remand of this cause to the state court and this answer is presented without waiving, or intend-

ing to waive, any of the protests or objections of this complainant against the said amendment to the said removal petition by leave of this court granted in face of the said injunction then in full force, and against the other objections and protests urged by or in behalf of this complainant against the granting of the same; and this complainant will ever pray, etc.

GEORGE F. HARDING,
Complainant.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

George F. Harding, being first duly sworn, states on his oath that he is the complainant in the above entitled cause whose name is subscribed to the foregoing answer; that he has read the said answer subscribed by him and knows the contents thereof and that the same, and the matters and things therein stated, are true of his own knowledge, except as to such matters as are therein stated to be on information and belief, and as to those matters he believes them to be true. Further affiant saith not.

Dated this 1st day of July, A. D. 1909.

GEORGE F. HARDING.

Subscribed and sworn to before
me this 1st day of July, A. D. 1909.

OSCAR SCHUELER,
(Seal) *Notary Public in and for Cook County, Illinois.*

GEORGE F. HARDING,
WM. J. AMMEN,
Solicitor for Complainant.

(Endorsed)
Filed in open Court
July 9, 1909.
H. S. STODDARD, *Clerk.*

EXHIBIT N.

ORDER OF OCTOBER 30, 1909, AS TO TESTIMONY OF WITNESSES RESIDING IN ILLINOIS TO BE TAKEN IN OPEN COURT, ETC.

George F. Harding
vs.
Standard Oil Company *et al.* } 28,865.

This cause coming on to be further heard upon the question of the citizenship of said George F. Harding, the complainant appearing in person and by his solicitor, William J. Ammen, and the defendant, Corn Products Manufacturing Company, being represented by Levy Mayer, and the court being fully advised,

It is ORDERED that hereafter all the testimony of all witnesses resident in the State of Illinois, both on behalf of complainant and defendant, shall be taken in open court herein at such times as may be designated by the court, including the testimony of the complainant, and that either party may produce in open court other witnesses residing outside the State of Illinois; that either party may re-examine or continue the cross examination or cross examine any witness heretofore produced by the other side, living in Illinois; that the evidence heretofore taken by deposition on behalf of complainant and said defendant may be used and read on the hearing of said issue; that the testimony of other witnesses residing outside the State of Illinois may be taken on behalf of either complainant or said defendant, within the times heretofore fixed by the order entered herein on July 9, 1909, said defendant being further authorized to take testimony of witnesses in rebuttal in California, at the conclusion of the taking of testimony in California on behalf of complainant.

EXHIBIT O.

MOTION (FILED JANUARY 26, 1910, AND STRICKEN FROM FILES BY ORDER OF FEBRUARY 12, 1910) TO VACATE AND SET ASIDE ORDER ENTERED JULY 9, 1909, DENYING MOTION TO REMAND, AND AFFIDAVITS IN SUPPORT THEREOF ATTACHED THERETO AND FILED THEREWITH.

United States of America
Northern District of Illinois, } ss.
Eastern Division.

IN THE

UNITED STATES CIRCUIT COURT,
In and for the Northern District of Illinois,
Eastern Division.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey *et al.*,
Defendants.
} In Chancery, No. 28865.

Now comes the complainant in the above entitled cause and moves the court to vacate and set aside the order entered in this cause on July 9, 1909, denying, or purporting to deny, a motion alleged in said order to have been then made by said complainant to remand this cause to the State Court, the said complainant never having made on that date the said alleged motion denied, or purporting to be denied, by said order, and in support of said motion, said complainant submits his affidavit herewith entitled in

said cause, together with other proof to be submitted on the hearing of this motion.

GEO. F. HARDING,
WM. J. AMMEN,
Solicitors for Complainant.

United States of America,
Northern District of Illinois,
Eastern Division. } ss.

IN THE

UNITED STATES CIRCUIT COURT,
In and for the Northern District of Illinois,
Eastern Division.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey *et al.*,
Defendants.
} In Chancery, No. 28865.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

George F. Harding, being first duly sworn, states on his oath that he is the complainant in the above entitled cause, and that he never made on July 9, 1909, any motion to remand this cause to the State Court, as recited in the order of July 9, 1909, and purporting to be denied by that order, but, on the contrary, this complainant then expressly refused and declined to make or adopt any such motion.

Affiant further states that, on June 30, 1909, he presented to this court his petition entitled in said cause, duly sworn to by him on June 29, 1909, and

then offered the said sworn petition, together with other evidence, in support of his motion and prayer set forth in said petition, which said petition is presented with this affidavit, and the same is hereby referred to and made a part hereof, and this affiant then moved the court for leave to file the said petition in said cause, and that the prayer thereof in relation to the remanding of said cause to the State Court be granted upon the grounds and reasons and basis set forth in said petition, to all of which Levy Mayer, as solicitor for defendant in said cause, objected. Whereupon the court announced from the bench that said petition would be examined by the court and disposed of by an order of court to be entered on a later date in said cause, and thereupon the said petition was delivered to the Judge of said court, the Honorable Arthur L. Sanborn, for the purposes aforesaid.

Affiant further states that on several occasions between June 30, 1909, and July 9, 1909, the matter of the said petition was again called to the attention of the said court, by this affiant, in open court, the said Levy Mayer being present as solicitor for defendant before the said Judge, on every of such occasions; and on July 9, 1909, in open court, the said Levy Mayer being then present again, as solicitor for defendant in said cause, the said petition was again presented to said Judge, and this affiant then again moved for leave to file the same, and that the said prayer thereof be granted by the court, and the court thereupon denied to said complainant leave to file the said petition, as recited in another order of July

9, 1909, relating to the taking of depositions in said cause.

This affiant further states that the said petition of this affiant was thus disposed of by the court on July 9, 1909, subject only to the right of review on a petition for mandamus by said complainant or otherwise; but, notwithstanding this fact, the said court, thereupon, of its own motion, and against the objection of this complainant, entered its said order of July 9, 1909, denying, or purporting to deny, an alleged motion then made by complainant to remand said cause to the State Court, but, in truth and in fact, this complainant did not make or present any such motion, and this complainant then and there objected and protested that the only motion made by this complainant was that contained in and set forth in said petition, and said order of July 9, 1909, reciting said alleged motion to remand, was then made and entered by the court, against the objections of this affiant, then fully stated to the court by this affiant, namely, that this affiant had not made such alleged motion recited in the said order, and that material statements, or findings, contained in said order, were contrary to the truth, and to the proof then before the court, and, particularly, that said order of July 9, 1909, contained a finding and recital in conflict with the opinion and judgment of the United States Court of Appeals in and for the Seventh Circuit, and impliedly contrary to the holding of the Supreme Court of the United States (in its denial of the petition for *certiorari*) in relation to the date when the injunction order reversed by the said Court of Appeals was actually entered by this court, and

this affiant then and there further contended that other denials and findings in the said order of July 9, 1909, were contrary to the truth and contrary to the proof then before this court.

This affiant further states that the statements contained in the said order of July 9, 1909, touching motion to remand, are untrue, and calculated to mislead any court authorized to review the said order, particularly the recital therein that this affiant's motion to remand this cause to the State Court "was *first* called to the attention of the court Dec. JUNCTION ORDER BEARS DATE DEC. 13, 1907," the an order in said suit No. 28695 enjoining complainant from further prosecuting this suit, No. 28865, or taking any steps or proceedings therein, WHICH INJUNCTION ORDER BEARS DATE DECEMBER 13, 1907," the essential meaning and effect of said recital and finding being that said injunction order was actually entered by this court on December 13, 1907, while, in fact, the said injunction order was actually entered on December 26, 1907, as shown by the record before this court in this cause, and as held and declared in and by the said Court of Appeals in its opinion and judgment reversing the said injunction order, and, in truth, the said motion to remand this cause, filed herein on December 23, 1907, was actually presented to this court by this affiant on December 26, 1907, *before* the entry of said injunction order, and, in addition, this affiant had repeatedly requested this court both on and before December 13, 1907, to hear a motion to be made by this affiant to remand this cause to the State Court, all of which requests were re-

fused by this court, as shown by the record and proof before this court.

Affiant further states that the said order of July 9, 1909, relating to motion to remand, not only contradicts the said findings and opinion of the said Court of Appeals, adhered to by that court, despite the argument and briefs of the appellee therein, and its petition for rehearing therein, in relation to the date when the said injunction order was entered by this court, but, in addition, the petition for *certiorari* presented by said appellee to said U. S. Supreme Court to review said judgment of the said Court of Appeals, and, particularly the printed suggestions filed by said petitioner in support of the said petition for *certiorari*, fully show that this very question of the date of the entry of the said injunction order had been so determined by the said Court of Appeals, and adhered to after said petition for rehearing therein, and this affiant presents with this affidavit one of the printed copies of the said petition for rehearing, and one of the printed copies of the said petition for *certiorari*, and one of the printed copies of the said suggestions in support of the said petition for *certiorari*, all of which are made exhibits to this affidavit and the same are made a part hereof.

Affiant further states that his motion to remand this cause was filed herein on December 23, 1907, and the same is disregarded and contradicted and denied by the said order of July 9, 1909, contrary to the said opinion and judgment of the said Court of Appeals.

Affiant further states that the appellee, in the said appeal to the said Court of Appeals, namely, the

Corn Products Refining Company, is the real and principal defendant in this cause, the said defendant, Corn Products Manufacturing Company being only the agent and tool of the said Corn Products Refining Company as shown by the amended bill of complaint in this cause, and as shown by the affidavit of Bedford filed by said defendants on November 11, 1907, on the hearing of the petition of November 4, 1907, in said Real Estate Company case, and the said order of July 9, 1909, untruthfully declares that this affiant's said motion to remand filed herein on December 23, 1907, and presented to this court on December 26, 1907, was actually made and presented after the said injunction order was actually entered by this court, thus contradicting the holding of the said Court of Appeals and the entire record and proof before this court in relation to that subject.

Affiant further states that on April 13, 1909, said Mayer, as solicitor for said appellee in the said Court of Appeals, moved that court to modify its judgment, and in support of such motion filed therein his printed brief and suggestions, a copy of which is presented to the court with this affidavit and the same is hereby made an exhibit hereto and a part hereof, half of the said brief, namely, pages 12-24, being given to the discussion of the contention that the said Court of Appeals in its opinion and judgment in said cause had acted upon a mistake as to the date of the actual entry of the said injunction order, which motion to modify said judgment was denied by the said Court of Appeals on April 21,

1909, as already shown by the proof before this court in this cause.

Further affiant saith not.

GEORGE F. HARDING.

Subscribed and sworn to before me,
this 26th day of January, A. D. 1910.

ALICE WILLNER,
(SEAL) Notary Public.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

William J. Ammen, being first duly sworn, states on his oath that he is one of the solicitors of record for the complainant in the above entitled cause; that he has read the foregoing affidavit of said complainant, George F. Harding, and knows the contents thereof; and that the said affidavit of said Harding, and the matters and things therein stated are true of this affiant's own knowledge in so far as the same relate to the proceeding of June and July, 1909, in said cause.

Further affiant saith not.

WM J. AMMEN.

Subscribed and sworn to before me,
this 26th day of January, A. D. 1910.

ALICE WILLNER,
(SEAL) Notary Public.

EXHIBIT P.

ORDER OF FEBRUARY 12, 1910, DENYING MOTION OF COMPLAINANT TO TAKE FURTHER TESTIMONY UPON THE ISSUE OF CITIZENSHIP BY DEPOSITION OR BEFORE A NOTARY PUBLIC IN CHICAGO, ILLINOIS, AND DENYING MOTION TO SET ASIDE ORDER OF JULY 9, 1909, DENYING MOTION TO REMAND.

George F. Harding,
vs.
Standard Oil Company of New Jersey *et al.* } 28,865.

The motions of the complainant to set aside the order entered herein July 9, 1909, denying a motion to remand and to permit the complainant to take certain evidence on the issue of citizenship by deposition, in the State of Illinois, instead of having the same taken at the hearing as heretofore ordered, came on to be heard on the 26th day of January, 1910, upon the record herein and the arguments of counsel, and the motion to set aside the order of July 9th was further heard on the second day of February, 1910.

It is thereupon ordered that the motion of complainant to take further testimony upon the issues of citizenship, by deposition, or before a notary public in Chicago, Illinois, be, and the same is hereby denied.

And it appearing to the court that the application to remand of June 30, 1909, recited in and denied by the order of July 9, 1909, was the one made in the petition of June 29, 1909, contained in the certificate

of evidence, dated November 19, 1909, but which petition was not permitted to be filed.

And it further appearing that all the steps taken by complainant up to and including the 26th day of December, 1907, in respect to remanding this suit are fully stated in the certificate of evidence made by Kenesaw M. Landis, a Judge of this court, in the suit of *Chicago Real Estate Loan & Trust Company against Corn Products Refining Company and others*, which is part of the aforesaid certificate of evidence in this suit.

It is thereupon ORDERED upon the record herein, that the motion of January 11, 1910, noticed for January 14, 1910, and heard the 26th of January, 1910, to set aside the order of July 9, 1909, is denied upon the grounds above stated.

And it is further ordered that the additional motion of complainant to vacate and set aside said order of July 9, 1909, together with the affidavit of George F. Harding, accompanying the same, purporting to have been filed January 26, 1910, are struck from the files because entirely unnecessary to preserve the rights and interests of the complainant herein.

The motion to complete the certificate of evidence and to suppress and strike out certain parts of depositions or exhibits were not brought on or heard, and are denied without prejudice.

EXHIBIT Q.

OPINION FILED OCTOBER 25, 1910, DECIDING ISSUE OF CITIZENSHIP.

Circuit Court of the United States,
Northern District of Illinois,
Eastern Division.

George F. Harding, *Complainant*,
vs.
Standard Oil Company *et al.*
} Equity, No. 28,865.

Hearing closed and case submitted without argument, July 18, 1910. Decided October 25, 1910.

The removal petition was amended pursuant to order granting leave (170 Fed., 650), and an answer filed denying that the complainant was in fact, when this suit was commenced, in October, 1907, a citizen of California, and not of Illinois, as alleged in the amended petition. A large amount of testimony was taken on this special issue, much of it in open court. Defendants sustain the burden of proof.

Mr. Harding, whose citizenship is in question, is over eighty years of age. He is a lawyer of marked ability. From his father he inherited a large amount of real estate in several counties in Illinois, other than Cook, in which the City of Chicago is situated, Winnebago, Lake, Montgomery, McDonough, Iro-

quois, Douglas, Mercer, Peoria, Warren and Henderson counties. Many years ago he located in Chicago, where he practiced law, and acquired considerable real property, also becoming interested in the Firemen's Insurance Company and other business matters.

During the year 1889 his wife left him, and on February 3, 1890, filed her suit for separate maintenance in the Circuit Court for Cook County, Illinois, resulting in a decree for separate maintenance and alimony, July 26, 1897. The case was most vigorously litigated, especially as to the amount and payment of alimony. In its various stages it is reported in 40 Illinois Appeals, 202; 79 App., 590 and 621; 105 App., 363; 120 App., 389; 144 Illinois Supreme Court, 588; 180 Ill., 481 and 592, and 205 Ill., 105. The last proceeding in court was March 27, 1905.

At the commencement of this proceeding Mr. Harding's home was 2536 Indiana avenue, Chicago. He continued to live there until May 15, 1895, when he claims to have removed to San Diego, California, and which he still claims as his residence and domicile. At this date he owned a large amount of real estate in Chicago, heavily incumbered, as well as the country property, was still interested in the insurance company, and was a party to a number of important lawsuits. He says, however, that he had reason to believe that this suit with his wife was practically terminated through a stipulation then recently offered by him to his wife, leaving only the amount of alimony in dispute, and that none of the other litigation would trouble him. He was not in good health and thought a change of his home to

California would be beneficial. He therefore turned over his business office to his son, George F. Harding, Jr., gave him a power of attorney to attend to all his business, terminated his membership in all the Chicago clubs to which he belonged, except the Chicago Athletic Club, parted with all his horses and vehicles, gave up his political activities in Chicago, installed his daughter Beatrice in his house, gave his son authority to sign his name to checks on his bank account, and "generally pulled up all my relations in Chicago, and they never have been restored in any way in any direction."

Before stating the facts on which complainant bases his claim to citizenship in California, the law governing questions of citizenship and residence in the federal courts, should, for the sake of clearness, be stated. It is insisted for Mr. Harding that he became a citizen of California in 1895, and once having changed his domicile it continues until the acquisition by him of another is clearly shown; and although he has not been in California for nearly eight years, yet there is no proof that he has reacquired his former Illinois citizenship, having no home there, and spending no time there except when compelled to do so in litigation to which he is a party, pending there. It is further contended that as the courts of California have held him to be a resident there, his citizenship is established, and the presumption of its continuance. It is necessary, therefore, to state the law as to citizenship or domicile and residence or inhabitancy, and then to recite the facts established by the evidence.

The words citizenship, residence, domicile and in-

habitancy, as used in federal statutes, have often been defined by the United States courts, with almost entire agreement; although the decision of a particular case may vary with its circumstances, and the mental constitution of the judge. The Chinese Tax Cases, 14 Fed., 338, 344. Domicile and citizenship are substantially synonymous terms, in most cases. *Collins* v. *Ashland*, 112 Fed., 175; *Penfield* v. *Chesapeake, etc., Co.*, 134 U. S., 351; 10 Sup. Ct., 566; 33 L. Ed., 940, where a person was domiciled in New York but resided in Missouri. "There is a marked distinction between domicile and residence. The term residence simply indicates the place of abode, whether permanent or temporary; domicile denotes a fixed, permanent residence, to which, when absent, one has the intention of returning." *Corel* v. *Chicago, etc., Co.*, 123 Fed., 452, 454. In *Mitchell* v. *United States*, 21 Wall., 352; 22 L. Ed., 584, the court say:

> "'Domicile' has been thus defined: 'A residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.' By the term 'domicile,' in its ordinary acceptation, is meant the place where a person lives and has his home. A place where a person lives is taken to be his domicile until facts adduced establish the contrary. * * * A domicile, once acquired, is presumed to continue until it is shown to have been changed. Where a change of domicile is alleged, the burden of proving it rests upon the person making the allegation. To constitute the new domicile two things are indispensable: First, residence in the new locality; and, second, the intention to remain there. The change cannot be made except *facto et animo*.

> Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. There must be the animus to change the prior domicile for another. Until the new one is acquired, the old one remains. These principles are axiomatic in the law upon the subject."

"When there has been an actual removal with intent to make a permanent residence, and the acts of the party correspond with the purpose, the change of domicile is completed, and the law forces upon him the character of a citizen of the state where he has chosen his domicile, although he may have formerly declared that he nevertheless considered himself a citizen of the state he has left." *Pacific, etc., Co.* v. *Tompkins,* 101 Fed., 539; 41 C. C. A., 488.

Citizenship implies much more than residence. It carries the idea of connection or identification with the state, and a participation in its functions. Daniel, J., in *Dred Scot* v. *Sanford,* 19 How., 476; 15 L. Ed., 691. It applies to a person possessing social and political rights, and sustaining social, political and moral obligations. Daniel, J., dissenting. in *Rundle* v. *Delaware, etc., Co.,* 14 How., 80; 14 L. Ed., 335. In the Constitution and laws of the United States the term is generally, if not always, used in a political sense to designate one who has the rights and privileges of a citizen of a state or of the United States. *Baldwin* v. *Franks,* 120 U. S., 678; 7 Sup. Ct., 656; 30 L. Ed., 766. A person may be a citizen of a state but not of the United States; as, an alien who has declared his intention to become a citizen, and who is by local law entitled to vote in

the state of his residence, and there exercise all other local functions of local citizenship, such as holding office, right to poor relief, etc., but who is not a citizen of the United States. Taney, C. J., in *Dred Scot* v. *Sanford*, 19 How., 405; 15 L. Ed., 691; *Slaughter House Cases*, 16 Wall., 74; 21 L. Ed., 394. An allegation of residence in a state does not show citizenship therein. *Continental Insurance Co.* v. *Rhoades*, 119 U. S., 237; 7 Sup. Ct., 193; 34 L. Ed., 380; *Everhart* v. *Huntsville College*, 120 U. S., 223; 30 L. Ed., 623; 7 Sup. Ct., 555; *Denny* v. *Pironi*, 141 U. S., 121; 11 Sup. Ct., 966; 35 L. Ed., 657; *Shaw* v. *Quincey Min. Co.*, 145 U. S., 444; 12 Sup. Ct., 935; 36 L. Ed., 768; *Bicycle Stepladder Co.* v. *Gordon*, 57 Fed., 529, Jenkins, C. J.; *De La Montanya* v. *De La Montanya*, 158 Fed., 117. Change of citizenship is not shown unless residence in the old state is in good faith given up, and permanent residence in the new one acquired. *Chicago, etc., Co.* v. *Ohle*, 117 U. S., 123; 29 L. Ed., 837; 6 Sup. Ct., 632.

The distinction between citizenship and residence is illustrated by the cases cited by the Supreme Court in *Galveston, etc., Co.* v. *Gonzales*, 151 U. S., 496; 14 Sup. Ct., 401; 38 L. Ed., 248; *Piquet* v. *Swan*, 5 Mason, 35; Fed. Cas. No. 11,134, is one of them, in which Judge Story held that a citizen of Massachusetts, residing in France, was not an inhabitant of the United States. Judge Story said:

> "A person might be an inhabitant without being a citizen; and a citizen might not be an inhabitant, though he retain his citizenship. Alienage or citizenship is one thing; and inhabitancy, by which I understand local residence, *animo manendi*, quite another."

Another of the cases cited approvingly is *Jopp* v. *Wood*, 34 Beavan, 88, where twenty-five years' absence and doing business in India did not change the domicile of a Scotchman. Another is *In re Capdeville*, 2 H. & C., 985, as to a Frenchman who had resided and done business in England twenty-nine years without losing his French domicile.

"Citizenship, as used in the law under consideration (the jurisdiction statute of 1875), means residence with intention of remaining permanently at that place. A man may reside in a state for an indefinite period of time without becoming a citizen." *Winn* v. *Gilmer*, 27 Fed., 817. The domicile and citizenship were held to have been changed.

A person cannot be a resident of two states at the same time. Residence is the act of residing, abiding or dwelling in a place for some continuance of time, the act or state of being seated or settled in a place. "It may happen that one may have two places of residence, in one of which he resides during one portion of the year, in the other during the remaining portion. In such case the place at which he happens to be constitutes his residence so long as he is there, and ceases to be such as soon as he leaves it for the other place." Baker, J., in *Zebert* v. *Hunt*, 108 Fed., 449, U. S. C. C., Dist. of Indiana. By this rule a citizen of Illinois might have his summer residence at his summer home at Lake Geneva, Wisconsin, and his winter residence at his winter home in Florida or Pasadena. "The term residence is flexible, and may be given a restricted or enlarged meaning considering the connection in which it is used. It involves, however, some idea at least of

permanency and fixed intention to remain." *Willingham* v. *Swift & Co.*, 165 Fed., 223. An allegation of residence in one state implies non-residence in another. *Zebert* v. *Hunt; Lawrence* v. *Southern Pac. R. Co.*, 165 Fed., 241.

Inhabitancy and residence are synonymous. *Bicycle Stepladder Co.* v. *Gordon*, 57 Fed., 529. "An inhabitant of a place is one who ordinarily is personally present there; not merely *in itinere*, but as a resident and dweller therein." *Holmes* v. *R. Co.*, 5 Fed., 523.

In *Sharon* v. *Hill*, 26 Fed., 337, the distinction between citizenship and residence is discussed at some length by Judge Deady. Among other things he said:

> "'Citizenship' and 'residence,' as has often been declared by the courts, are not controvertible terms. *Parker* v. *Overman*, 18 How., 141 (15 L. Ed., 318); *Robinson* v. *Cease*, 97 U. S., 648 (24 L. Ed., 1057); *Grace* v. *American Cent. Ins. Co.*, 109 U. S., 283 (3 Sup. Ct., 207; 27 L. Ed., 932); *Prentiss* v. *Barton*, 1 Brock., 389 (Fed. Cas. No. 11,384). Citizenship is a status or condition, and is the result of both act and intent. An adult person cannot become a citizen of a state by simply intending to, nor does anyone become such citizen by mere residence. The residence and the intent must coexist and correspond; and though, under ordinary circumstances, the former may be sufficient evidence of the latter, it is not conclusive, and the contrary may always be shown; and when the question of citizenship turns on the intention with which a person has resided in a particular state, his own testimony, under ordinary circumstances, is entitled to great weight on the point."

It was admitted by the plaintiff in the *Sharon* case that he had resided in California for a long time, but he testified that he never intended to become a citizen of California or cease to be a citizen of Nevada. It was held that he was a resident of the former and citizen of the latter state. The following decisions approve the rule of the *Sharon* case: *M'Donald* v. *Salem, etc., Co.*, 31 Fed., 577; *Collins* v. *Ashland, supra; Eisele* v. *Oddie*, 128 Fed., 941.

The declarations or statements of a person of his intention are not conclusive. *Winn* v. *Gilmer*, 27 Fed., 817; *Rucker* v. *Bolles*, 80 Fed., 504; 25 C. C. A., 600; *Alabama, etc., Co.* v. *Carroll*, 84 Fed., 780; 28 C. C. A., 207; *Corel* v. *Chicago, etc., Co.*, 123 Fed., 452. "On a change of domicile from one state to another, citizenship may depend upon the intention of the individual. But this intention may be more satisfactorily shown by acts than declarations. An exercise of the right of suffrage is conclusive on the subject." (*Shelton* v. *Tiffin*, 6 How., 185; 12 L. Ed., 397.)

Upon the question of domicile, usually co-extensive in meaning with citizenship, the Supreme Court in *Mitchell* v. *United States*, 21 Wall., 353; 22 L. Ed., 584, say:

> "Among the circumstances usually relied upon to establish the *animus manendi* are declarations of the party, the exercise of political rights, the payment of personal taxes, a house of residence, and a place of business."

In many of the state courts residence and citizenship are regarded as convertible terms, but the

federal courts have adopted a different rule, as clearly shown by the cases cited.

A change of citizenship, then, involves three elements, the intention to make the change, actual removal accompanied by permanent residence in the new home with the intention of removing there permanently (*animus manendi*), and the intention of returning there whenever absent (*animus revertendi*). In this case the intention to make the change is supported by repeated and long continued declarations by Mr. Harding, although his acts raise doubt even on this element; while his actual removal, permanent residence, in California, *animus manendi* and *animus revertendi* relating to California find very little support in the proofs.

Concerning Mr. Harding's declarations of intention to change his residence from Chicago to San Diego, and his most positive testimony, there is ample proof in support of such intent. It is true that quite a number of written instruments were put in evidence, signed by him May 15, 1895, reciting his residence in Chicago. But a large number recite his residence in San Diego. There is also some testimony, as well as certain circumstances, which make it possible to suppose that he desired to obtain residence in California, so that he might there obtain a divorce and defeat his wife's alimony. He strenuously denies this, and even if it were clearly shown, would not prevent his acquiring another citizenship, if he actually did remove and make his permanent home in San Diego.

Mr. Harding had a sister, Mrs. Mary Schneider, living in San Diego. She lived in a small house,

which she had owned for some years. They had had very little social intercourse for a long time. He had his wife's law suit and several large cases on his hands, but seems to have thought he could get rid of this litigation, or that it would not seriously trouble him. This proved to be a great mistake. He was not in good health, suffering from a very painful and annoying ailment common to elderly men, not alarming in its nature, but which grew worse until he was finally relieved by an operation, performed in Paris in 1905. His real estate in Chicago was mortgaged for all it was worth, and he wished to turn it over to his son, George, who had shown evidence of business ability, and who has since made good. His farm property was in the hands of competent agents, so that it could be safely left to them. So, as he testifies, he proposed to change his residence to San Diego, attracted by its wonderful climate, where he could be out of doors all the year and escape the rigors of winter in Chicago. He was also free from family entanglement, so far as a change of residence was concerned. His wife lived apart from him. His children had reached maturity, at least those who adhered to his cause in the family dispute. Two boys, George and Abner, and one daughter, Beatrice, sided with him, the others with the mother. So far as his intention to change his residence is concerned, therefore, it is supported by the evidence. We shall see, however, to what extent he was able to carry out that intent.

The evidence of the fact of removal is not as clear as that of intent, but more so than that relat-

ing to the acquisition of a new permanent home. He left Beatrice in charge of his home at 2536 Indiana avenue, Chicago. George also lived there, he not having married until December, 1896, and living at other places until 1902, when Beatrice left the home upon her own marriage. Mr. Harding disposed of his horses and carriages and gave up all his clubs in Chicago, except the Chicago Athletic Club, of which he is still a member. He went to San Diego in the fore part of May, 1895, as an ordinary traveler would go, taking along nothing but what he might need on a journey.

His sister was much surprised to see him, but readily fell in with his idea of removing to San Diego. He repeatedly declared that he had come there to live. He says his sister proposed to give him a lease of her house furnished, she to be the housekeeper, and live with her daughter and grandson. Accordingly a lease was made in May, 1895, running a year, at a rental of twenty-five dollars month. The paper was not found, but was referred to in Mr. Harding's testimony in his California divorce suit, tried in 1901. He says he paid rent for awhile. Mrs. Schneider left San Diego for Denver in the fall of 1897, renting the place to others. Mr. Harding was assigned a room in the house.

Shortly after going to San Diego the pending litigation in Chicago assumed a condition of great activity, requiring his immediate presence there. How much time he spent in San Diego for the next six years, or until he left it never to return, is in much doubt. There is evidence tending to show that he was in Chicago some part of each and every

month after May in 1895, every month in 1896, except October, every month in 1897 except March, every month in 1898, except March and November, also in January, February, March, April, July, September, November and December, 1899, and every month but December in 1900. It is insisted that he was not in San Diego more often or continuously because of the great activity of his Chicago law suits, making it impossible to carry out his intention to remove, and thus his actual residence in San Diego is not affected by these necessary absences. On the contrary, the facts show that he found it impossible to make a permanent home away from Chicago.

The most significant evidence in the case, however, is that he never in any way, or to any degree, became identified with San Diego as a city community. He had nothing in common with its inhabitants. He never voted there, paid taxes, was assessed for taxation, held real or personal property, took any interest in municipal or political affairs, nor did his name ever appear in a city directory or telephone book. To say he ever became a citizen there, implying civil and political relations, would require a great stretch of imagination. A temporary resident he may possibly have been, but never domiciled as a citizen, so as to afford any presumption of continuing status. Some thirteen hundred envelopes were in evidence, representing letters from him when absent from Chicago, running from 1900 to 1909. Of these only thirty-eight were from California, three from May 28 to June 6, 1900; twenty-nine from January 16 to February 18, 1901, while he was at the Coronado Hotel for the temporary pur-

pose of attending his divorce suit and a suit brought against him for attorney's fees, and six from January 13 to 18, 1902, while he was on a pleasure trip to Los Angeles. The evidence of permanent residence in California, *animo manendi et revertendi*, is so slight as to be hardly worth serious consideration. Letters were written earlier, while he was visiting his sister, which have disappeared with the lapse of time, but the proof as a whole falls far short of showing citizenship in California.

As to *animus revertendi*, the proofs show that when he was absent from Chicago and San Diego he generally returned to Chicago, not San Diego. This is universally true since the year 1900. A few of the envelopes sent from California direct a return to Hotel Coronado, but most of them to Chicago. I believe not one of them sent from other places directs return to any place in California. For the last nine years there is not a hint or intimation in his proofs, other than declarations, that Mr. Harding had a home in San Diego, or ever contemplated going there, even for a pleasure trip.

To show the difficulties besetting the case for complainant on the question of citizenship, the following is cited from his cross examination:

> "Q. Give the court the street and number and city in California where you now live. A. My last stay in California—
>
> "Mr. Mayer: I object. Answer my question.
>
> "The Court: Answer the question if you can.
>
> "A. I should say that my home in California would be—"

"Mr. Mayer: Answer.

"The Court: Yes. Answer the question.

"Mr. Ammen: I object to any such—

"The Court: Answer the question, or if you cannot answer it, say so.

"A. It will have to be more specific, in order to answer it. I will have to answer fully, and I desire to answer fully, in saying that I cannot.

"The Court: You cannot answer that question.

"A. Not that way, no. I—

"Mr. Mayer: I object.

"A. Well, I have the right, the right of a witness to answer fully, when he says he can not tell.

"Q. Give the court the street and number of the house, and the city in California where you lived when you were last in California. A. Always in the City of San Diego, and when I was there I either resided at some hotel, and chiefly, I think, at the Hotel Coronado, in said city. If you refer—I was also at the other hotels in California upon journeys there, particularly at Los Angeles and Pasadena."

The California divorce suit was begun by complainant against his wife August 31, 1897, about a month after the decree of separate maintenance in Illinois. In the bill he alleges residence in California for a year, and in San Diego for three months, and desertion by his wife. An answer was filed on behalf of Mrs. Harding, denying his residence and the alleged desertion, and setting up the separate maintenance decree as a bar. Mr. Harding says the divorce suit was brought as a defensive measure. "I never dreamed of anything else, and so announced it. There was nothing done for four

years, you see, except service." It was tried January 14-30, 1901, and a decree in his favor rendered January 31, 1901. He testified to his residence in California from 1895, and referred to the lease from his sister of her home in San Diego, but stated that she had left the city in 1897, and that he had lived at hotels in San Diego and other California cities. It appears that Mrs. Schneider sold the San Diego house January 12, 1899, and that her death occurred December 11th of the same year. The divorce decree was affirmed by the California Supreme Court October 17, 1903, and its decree reversed by the United States Supreme Court May 17, 1905, on the ground that the California court refused credit to the separate maintenance decree; the divorce decree was finally reversed by the California court, pursuant to the federal mandate, January 2, 1906.

The courts of California were not required to hold that Mr. Harding was a citizen under the federal rules in order to sustain their jurisdiction. Western states are liberal in their construction in such cases, in favor of their own jurisdiction, and their judgments are not always worthy of acceptance. He may possibly have gained a temporary residence in San Diego in 1896 or 1897, although the evidence does not indicate even that, much less that he ever acquired a new citizenship.

It is not necessary to state the substance of the voluminous proof as to Mr. Harding's relations to Chicago, but the testimony touches them at every angle, family, club, property, business (law suits) and civic or political. It is true that he spent a large portion of his time away from Chicago, at

Boston and nearby places, New York and Washington, but this was done to a considerable extent on account of the Chicago litigation business. These absences were always accompanied by the intention to return to Chicago, and not to San Diego. Most of the proof relating to Chicago tends to show residence there, though many contrary declarations appear.

On the whole, it seems to me beyond the possibility of a doubt that George F. Harding is still a citizen of Illinois. In one part of his cross examination, when talking rapidly and under stress, he unconsciously referred to the Indiana avenue house as his home, although the title had been transferred to a corporation controlled by his sons, and by various dummy conveyances passed to others, controlled by George F. Harding, Jr., and occupied by him. Through two general deeds made by complainant in 1896 and 1897, purporting to transfer all his property to the same corporation, one recorded in Cook County and the other in Warren County, the impression was created that he had parted with all his lands in Illinois. As a matter of fact, however, they were intended to be restricted to the heavily encumbered Cook County property.

An order should be entered finding complainant to have been a citizen of Illinois when the bill was filed in the State Court, October 19, 1907, and denying the motion to remand.

.....,

Judge.

October 25, 1910.

EXHIBIT R.

NOTICE OF OCTOBER 29, 1910.

United States of America,
Northern District of Illinois,
Eastern Division Thereof. } ss.

IN THE

CIRCUIT COURT OF THE UNITED STATES,
In and for the Northern District of Illinois,
Eastern Division Thereof.

George F. Harding
vs.
Standard Oil Co.,
Corn Products Co. *et al.* } No. 28,865.

To George F. Harding and Wm. J. Ammen, Solicitors for the Complainant, George F. Harding:

Take notice that on Wednesday, November 2, 1910, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, before Judge A. L. Sanborn in the Federal court rooms at Chicago, we shall ask that an order be spread of record in the above entitled case, based upon the entry in the minute book of the clerk of said court entered on October 25, 1910, and on the opinion of Judge A. L. Sanborn in the above entitled cause filed herein on October 25, 1910, a copy of which order is herewith served upon you.

LEVY MAYER,
Solicitor for Corn Products Manufacturing Co.

Dated, Chicago, Illinois, October 29, 1910.

EXHIBIT S.

ORDER DATED OCTOBER 25, 1910, FINDS GEORGE F. HARDING TO BE A CITIZEN OF ILLINOIS AND A RESIDENT OF THE CITY OF CHICAGO, AND AGAIN DENIES MOTION TO REMAND TO STATE COURT.

George F. Harding
vs.
Standard Oil Co. Corn Products Co. *et al.* } 28,865.

There having heretofore come on to be heard the removal petition, as amended, of the defendant Corn Products Manufacturing Company, the same having been amended by leave of court granted on May 15, 1909, and upon the answer of said complainant, George F. Harding, to said removal petition, as amended, which answer was heretofore filed herein on July 9, 1909, and which answer prays for a trial upon the issue of citizenship raised by said answer, and also prays that there may be a remand of this cause to the State Court, and the court having heretofore heard and considered the evidence and taken the matter under advisement, and being now fully advised in the premises, and the parties being now in court by their respective solicitors, the court finds that said George F. Harding was, on October 19, 1907 (the date when the original bill of complaint herein was filed by him in the Superior Court of Cook County, Illinois), and continuously since has been, and now is, a citizen of the State of Illinois and a resident of the City of Chicago, in said State; and

The court further finds that said George F. Hard-

ing was not, on October 19, 1907, and at no time since has been, and is not now, a citizen or resident of the State of California; and

The court further finds that said complainant, George F. Harding, is not entitled to have this cause remanded to the State Court.

WHEREFORE, the premises considered, it is hereby ORDERED, ADJUDGED AND DECREED that the prayer and motion of said answer of George F. Harding, that this cause be remanded to the Superior Court of Cook County, Illinois, be and the same is hereby overruled and denied; and

It is hereby FURTHER ORDERED, ADJUDGED AND DECREED that the said Corn Products Manufacturing Company is entitled to and shall be paid by said George F. Harding all of the costs incurred by said Corn Products Manufacturing Company in the matter of said hearing upon said removal petition, as amended, and said answer thereto, said costs to be taxed by the Clerk of this court, and that execution issue therefor.

EXHIBIT T.

PROCEEDINGS OF NOVEMBER 2, 1910, BEFORE JUDGE SANBORN.

Wednesday, November 2, 1910, 10 o'clock a. m.

Mr. Mayer: We gave notice to opposing counsel on last Saturday and served upon them a copy of the order which we will ask to have your Honor spread of record pursuant to the decision which was handed down on October 25, and to the minute of your Honor's order entered on that date. A copy of the order as we have drafted it was served on counsel on last Saturday. I will hand your Honor the order as we submit it.

Mr. Ammen: If the court please, that order, as drafted by Mr. Mayer, refers to Mr. Harding's answer filed July 9, 1909, to the removal petition, as amended. Your Honor will perhaps remember that that answer insists that this court never had any jurisdiction of this case except to remand it to the state court, and denies the power of the court to allow the amendment, and insists that the order allowing the amendment was void by reason of its being without power and without jurisdiction, and also insisted that the original motion to remand should be allowed, the motion filed in December, 1907, should be allowed, despite the amendment to the removal petition; and also insisted that the amendment should not have been allowed on the further ground that at the very time it was allowed this case was—the mandate in the other case had not issued from the Court of Appeals, so that the case

was still within the grasp of the injunction in that case.

The answer says: (Here counsel read from the document referred to.)

Now, the order as drafted by Mr. Mayer recites: (Here counsel read from the document referred to.)

You are referring to this answer which I have just read from, your Honor?

The Court: Yes.

Mr. Ammen: Which answer was heretofore filed herein on July 9, 1909. That is the correct date of the filing.

Now, there is no motion except in that answer. I don't want it to appear that we are now making a new motion. In our answer there we carefully endeavored to preserve all our objections to the proceeding and to the jurisdiction of the court. I don't want this record to contain even an implication that we are now making an independent motion outside of that petition, that answer, because we there made our—we endeavored to reserve our rights there, and I think this is all stated, the prayer and motion of said Harding contained in said answer, so as not to show that we are now making an independent motion.

Now, as to the rest of the provision, about costs, I would be glad—— Will your Honor be here again within a few days?

The Court: I haven't any plans about coming again.

Mr. Ammen: Well, your Honor knows Mr. Harding's relationship to this litigation, as attorney and client both, and plaintiff, and I sent him a letter-

gram yesterday with reference to this proposed order. It will take me two or three days to get his suggestions about it, and as there is no emergency that I can see, I would be glad to have time enough to hear from him, at least, and give him his opportunity to make any other suggestions.

Now, as to the provision for costs: We claim, first, without having an opportunity to confer with Mr. Harding—we say that the court has no power to award costs, because it has no jurisdiction at all. That is the same point we urged all the time, and we want to urge that against any order for costs.

We say further, your Honor, that the costs cannot be awarded on an interlocutory matter like this. This is not a final order; it is not a final decree. That would compel us to appeal the case in piecemeal and the Appellate Court would not probably hear it in piecemeal, and more than that, further than that, it provides that the clerk should tax the costs.

Your Honor will see that there will be all sorts of trouble here if the clerk should tax the costs.

There are a great many exhibits, some of them filed and some of them not filed, and if it is done at all, it should be directed in the decree so we will have no trouble with the taxation of the costs. We don't understand that on an interlocutory motion costs can be awarded. How are these costs disposed of? The costs await the final decree in the case. I think your Honor held that in the other case in which you taxed——

The Court: That is pending on appeal, isn't it?

Mr. Ammen: Yes; but in that case we insisted that so far as the parties asking costs were con-

cerned, that that was—that that had been finally disposed of. Your Honor had suggested there that you didn't see any way of awarding costs pending the hearing of the case, but the objection that I did urge here, that I would urge, but I don't know what else Mr. Harding will want to say about it, is that there is a lack of power in addition to this motion being premature.

Mr. Mayer: Taking up the objections in the order in which counsel has submitted them, I can draw no logical inference at all from the reading of his answer as being pertinent, no matter what recitals are contained in his answer, about objecting and excepting, and objecting and excepting. The prayer of his answer was the thing that your Honor was called upon to rule on, and this order is drafted to dispose of the prayer of that answer.

His next objection is that the decretal part of this order provides that the prayer and motion of said George F. Harding, that this cause be remanded to the Superior Court of Cook County, Illinois, be and the same is hereby overruled and denied, that that does not specify what prayer and motion. The recital in this order shows what was heard by your Honor there and it shows that the only thing that was heard was the issue raised by that answer and the prayer of said answer; therefore, there can be, by no possible stretch of reason, any support for the suggestion that this refers to anything except what was contained in the answer.

The Court: Does the answer make the motion to remand?

Mr. Mayer: Yes, your Honor.

The Court: I think it does.

Mr. Ammen: I read from the answer.

The Court: Yes, I think it does. I think I remember that it does; but I want to hear it again. It says so here and also prays that there be a remand of said cause to the State Court.

Mr. Mayer: Yes.

The Court: I guess there is no question about that.

Mr. Mayer: It specifies it expressly, and I used the very language of the prayer, and this complainant prays that there may be a speedy hearing and decision of said issue of citizenship and a remand of this case to the State Court.

The Court: Yes.

Mr. Mayer: And I have used the very language of the answer.

Now, the next suggestion that is made is that there should be no order for costs because it is stated, first, that the court is without jurisdiction. If your premise is correct, then your order will be futile and void, not only as to costs, but all the remainder of the order, if the case is *quoram non judicia*, no matter what your Honor puts in this order, it will be inefficacious, so that the objection that the order for costs goes to the court without jurisdiction or applies to the entire order, and upon that question your Honor has ruled.

There remains, then, the further suggestion that your Honor should not order costs interlocutory, so to speek. This proceeding is final as to this particular hearing. There is nothing more than can be done in this case with reference to the petition, to

our petition for removal, and the answer. It is final.

Your Honor might beat us on the merits, when the case goes to a final hearing, but that would not obviate our right to costs upon this petition and order.

The Court: It is a question of time simply.

Mr. Mayer: Sir?

The Court: It is a question of time simply.

Mr. Mayer: Now, as to the time——

The Court: You would still be entitled to costs, perhaps, and that is dependent upon the circumstances; even if you were defeated on the merits, you would still——

Mr. Mayer: We would be entitled to costs in this proceeding.

The Court: Perhaps so, yes; probably so, but——

Mr. Mayer: In fact so, your Honor.

The Court: But shouldn't the matter all be deferred?

Mr. Mayer: No, your Honor, that is not the practice. The rule is just the other way in equity, and I will read a sample case from *Avery* v. *Wilson*, 20 Fed., page 856. I read from page 859:

(Here counsel read from said decision.)

That is not only one case, your Honor, but that is the uniform practice.

The Court: That is the uniform practice where the merits of the case are determined, leaving something to be still——

Mr. Mayer: Well, if you will turn to the book you will find that wherever any motion interlocutory is disposed of finally, and great costs have accrued, the court will order the costs to be paid. Now, what is the reason for it? Suppose these costs are not

paid? They are very large, your Honor; they run up into several thousands of dollars. I mean the taxable costs.

The Court: Yes.

Mr. Mayer: Suppose they don't pay them? Your Honor has the right to stay the proceeding until the costs are paid or we otherwise would have a hearing in which evidence covering many thousands of pages have been taken upon an issue raised by them and the disposition of which issue is final, and that disposition then is final in this cause—I mean in this court. We might go on for four or five years more and have tremendous additional cost piled up, and in the end find that we cannot collect these costs and there is no security given for these costs and there is no payment of them. I submit and urge, your Honor, that we are entitled to these costs. It should not be forgotten that they have attempted to collect the costs in the branch proceeding which your Honor knows about.

The Court: Yes.

Mr. Mayer: I think they amounted to six hundred odd dollars.

The Court: Seven hundred dollars; yes.

Mr. Mayer: There is an appeal pending from that proceeding. I don't at this moment desire to anticipate what the court will do or counsel will do in that case. It is set for tomorrow. But, your Honor, we are entitled to costs.

The Court: Set for hearing in the Court of Appeals tomorrow?

Mr. Mayer: In the Court of Appeals.

The Court: Oh, yes.

Mr. Mayer: Now, what we propose to do, if your Honor enters this order, is—and we are entitled to it—is to dismiss that appeal in the Circuit Court of Appeals, and set off as against the costs allowed against us these costs to which we are entitled; otherwise, your Honor, we will be in the position of paying them costs, with the possibility—I won't say probability—of never being able to collect them from the complainant. The complainant in this suit is George F. Harding. You have heard enough in this record as to what has been done or attempted to be done by him with his property, and it would be, I think, manifestly unjust——

The Court: I guess you can get them all right if you are entitled to them. I don't think you will run much risk; your firm will get them.

Mr. Mayer: Well, if your Honor thought—if your Honor had the experience which the other members of the bar in this district have had in endeavoring to collect judgments on executions, I think you would not perhaps be so cheerful about the situation.

Mr. Ammen: There is no necessity for that kind of talk at all.

The Court: I don't think you will have any trouble.

Mr. Mayer: Your Honor, we are entitled to these costs.

The Court: Well, that is a different proposition.

Mr. Mayer: And I appreciate the compliment that my firm would have no trouble; but if your Honor knew as much about the unsuccessful efforts to collect judgments on executions from George F. Harding as I do, I think you would agree with me that

you are giving us more credit than we are properly entitled to.

Mr. Ammen: There is absolutely no foundation for that talk. There never has been——

Mr. Mayer: Your Honor recalls how in the alimony case, when Mrs. Harding wanted alimony, the old gentleman finally turned out some alleged real estate, and you remember the discussion during the hearing about the Statute of Illinois that he had the right to turn out real estate and there could be a sale of real estate and then a redemption, and there was fifteen months for the period of redemption. I think your Honor will recall there was some such statement made by me.

Mr. Ammen: Your Honor will further recollect that that was incident to his claim that she was to help him raise the money out of the real estate.

Mr. Mayer: If your Honor is correct in your Honor's ruling of October 25, then we are entitled to have our costs, and why not? That matter is disposed of and never can be heard again in this court—I mean the matter of our petition. I don't mean that the court can't reconsider or rehear it, but the order is final on that petition.

The Court: Yes.

Mr. Mayer: And costs follow, as a matter of course; and if your Honor will examine the authorities and Daniels' Chancery Practice, which I referred to in this 20th Federal, which was referred to in the 20th Federal and other cases that I have——

The Court: I will look at those.

Mr. Mayer —in a book which has perhaps come before your notice, I don't know whether it has or

not; it is rather a surprise to find such a book, entitled "Costs in Federal Courts." Has your Honor ever seen the book?

The Court: Yes.

Mr. Mayer: It is rather surprising to see how little questions questions are—on how little questions text books are written.

The Court: Is that in your office?

Mr. Mayer: Yes, that is in my office.

Mr. Ammen: What is the name of the author?

Mr. Mayer: Gunckel.

The Court: Well, leave them with me.

Mr. Mayer: Yes, I will leave them with your Honor.

Now, one suggestion more about the entry of this order. In the absence of Mr. Harding, which is not infrequent, that ought not to delay the spreading of record of the order which your Honor has entered. It follows your opinion and follows strictly the minutes of the order already of record in this cause.

The Court: I see no objection to putting in the words "in said answer" there. It is perfectly plain without that.

Mr. Mayer: I have no objection, your Honor; none whatever.

The Court: That is what it means anyway.

Mr. Mayer: I made the order——

The Court: The prayer and motion of the said George F. Harding?

Mr. Mayer: I would say "of said answer of said George F. Harding."

Mr. Ammen: What is that?

The Court: "Prayer and motion of said answer of," would not that fix it?

Mr. Ammen: Prayer and motion of said answer of——

The Court: "Answer of."

Mr. Mayer: "Of George F. Harding."

The Court: Yes; prayer and motion of said answer of George F. Harding. Put in the words "answer of" at the end of the line after the word "said"; wouldn't that fix it?

Mr. Ammen: "Prayer and motion of said answer"?

The Court: "Answer of."

Mr. Mayer: And just one further word. I will hand your Honor the 20th Federal that I borrowed from your library.

The Court: In here? Yes. All right.

Mr. Mayer: And I would, if possible, if not appearing too persistent, I would like to have this order entered today.

The Court: Yes; I think I can enter it this afternoon.

Mr. Mayer: I have handed your Honor the original.

Mr. Ammen: Now, I would like to have, if your Honor enters an order, I would like to have it—it is against our objections; that is, we object to the order——

The Court: Yes, I have it on the bottom here that you object to it.

Mr. Ammen: Yes, and perhaps, unless your Honor is going to be back before December, there ought to be an order entered continuing the—reserving the

right to settle the certificates of evidence as to these proceedings to the next term, which is the third Monday in December.

The Court: Oh, I will be back before that.

Mr. Ammen: You will be back before that?

The Court: Yes.

Mr. Mayer: We have no objection to that; but the objection and exception saves itself, your Honor, in chancery.

The Court: All right.

Mr. Mayer: I will leave with you the original order.

The Court: Yes; I will keep this order.

Mr. Mayer: The reason I suggested the entry of it today is on account of the matter tomorrow, your Honor.

The Court: Yes; do you propose to dismiss if this is allowed?

Mr. Mayer: Yes, your Honor; and come back and ask for the set-off.

The Court: For the set-off?

Mr. Mayer: Yes.

Which was all the proceedings had in the above entitled matter on said date.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

IN THE MATTER OF THE APPLICATION

OF

GEORGE F. HARVEY, FOR A WRIT OF MANDAMUS TO COMPEL HIS APPEARANCE AND HEARING BY THE SUPREME COURT OF THE STATE OF WASHINGTON, SITTING EN BANC, HOLDING THE SAME, UNDER CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE NORTHERN DIVISION OF KITTITAS, SITTING IN DIVISION THEREOF, AND DIRECTING SAID SUPERIOR COURT TO PROCEED IN THE CAUSE.

EXHIBIT A TO PETITION FOR MANDAMUS.

Pages 1 and 2.

WILLIAM I. AMMEN,
Attorney for Petitioner.

Gateway Law Reporting Co.

EXHIBIT A.

Part I.



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Recites beginning of hearing of motion to amend removal petition, April 23, 1909	1
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Replication of Corn Products Manufacturing Company, filed May 4, 1909	52-69
Objections to the filing of said replication and statement of court that it would be assumed that same was denied by complainant	69
Recital that foregoing was all the evidence "upon the hearing of said motion to amend said removal petition"	70
Said motion for leave to amend was taken under advisement, May 4, 1909	70
Opinion, May 15, 1909, allowing said amendment	70-76
Motion of May 22, 1909, to strike said replication from the files, etc., denied June 12, 1909	76-77
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1909, transferred by said Hon. K. M. Landis, then holdin
said Circuit Court, to the undersigned, Arthur L. Sanborn, a
a Judge of said court.

Motion for leave to amend, sent by Judge Landis to Judge Sanborn.

The Court further certifies that thereafter on said Apr
23rd, 1909, at 2 P. M. in the afternoon of said date, the s
licitors and counsel for said George F. Harding, complainan
and said Corn Products Manufacturing Company being pre
ent, and the court having entered upon the hearing of sai
motion, Mr. Levy Mayer, one of the counsel for said Cor
Products Manufacturing Company read said motion and th
consents thereto attached to amend said removal petitio
and referred to and read parts of the printed transcript
record filed in the Supreme Court of the United States, upo
an application for a writ of *certiorari* to the United States Ci
cuit Court of Appeals for the Seventh Circuit, in the case
George F. Harding, *et al.* v. The Corn Products Refining Com
pany, *et al.*, A COPY OF WHICH PRINTED TRANSCRIPT
RECORD IS AS FOLLOWS:

Printed record admitted in evidence.

NOTE: Said printed transcript of record thus inserted i
said Certificate of Evidence, is reprinted as Part II of thi
"Exhibit A". Following the insertion thereof in the Ce
tificate of Evidence, the same proceeds as follows:

It is further certified that the complainant insisted that th
whole of said Transcript should be considered as being i
evidence and the same was so considered by the Court.

And also read in support of said motion to amend said re
moval petition the affidavits of Levy Mayer and Harlen F
Parmenter, which are as follows:

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United States of America,
Northern District of Illinois,
Eastern Division. } ss.

Affidavit of Levy Mayer.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford, and E. P. Wemple,
Defendants.
} No. 28,865.

LEVY MAYER, being first duly sworn, upon oath deposes and says as follows:

1: I now am and on October 19, 1907, was, and for many years theretofore had been a member of the bar of this court, and of the United States Supreme Court. I was on October 19, 1907, and ever since have been and now am of counsel in the above entitled cause for said Corn Products Company, Corn Products Refining Company and Corn Products Manufacturing Company, three of the defendants to the bill of complaint herein. On November 4, 1907, and continuously since Mr. James M. Sheean, of the firm of Messrs. Calhoun, Lyford & Sheean, was and still is one of the solicitors for said three named defendants.

2. On November 4, 1907, I prepared and caused to be filed, as prepared by me, the petition for removal filed herein by said Corn Products Manufacturing Company; that said pe-

tition so on file is the same petition, in manner and form as it was prepared by me; that the following statement in said petition contained—

> "That at the time of the commencement of this suit, the said complainant, George F. Harding, was and continuously since has been and now is a resident and citizen of the State of California, and a citizen of no other state or country,"

was inserted in said petition because and on account of the allegation contained in the bill filed herein on October 19, 1907, and in the amended bill filed herein on October 25, 1907, which statement is as follows:

> "Your orator, George F. Harding, a resident and citizen of the State of California, humbly complaining, respectfully represents unto your Honors."

3: The said statement above quoted from and so contained in said petition for removal as to the residence and citizenship of said George F. Harding was due entirely to the misinformation under which I then labored and which misinformation was derived by me from the said statement above quoted and so as aforesaid contained in said original and amended bills as to the residence and citizenship of said George F. Harding.

And further deponent saith not.

(Sgd) LEVY MAYER.

Subscribed and sworn to by said Levy Mayer, before me, a Notary Public, this 15th day of April, A. D. 1909.

KATHERYN MCDONALD,
(Seal) *Notary Public.*

Complainant objected to the foregoing affidavit because made on information and belief.

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United States of America,
Northern District of Illinois, } ss.
Eastern Division.

Affidavit of Parmenter

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for the Northern District of Illinois,
Eastern Division Thereof.

George F. Harding,
vs.
Standard Oil Company, *et al.* } No. 28,865.

HARLEN H. PARMENTER, being first duly sworn, upon oath deposes and says that he is of lawful age; that at the request made in March, 1909, by said Corn Products Manufacturing Company, he has since March 17, 1909, been making careful and exhaustive investigation for the purpose of determining the residence and citizenship of the above complainant, George F. Harding, on October 19, 1907, and before and continuously since said date up to the present time; that based upon said investigation deponent says that for a long time continuously prior to October 19, 1907, and on October 19, 1907, and continuously since up to and including the present time, said complainant, George F. Harding had been, was and is a citizen of the State of Illinois and a resident of the City of Chicago in said State of Illinois; that said George F. Harding was not on October 19, 1907, and at no time since has been and is not now a citizen of the State of California or a resident of said State:

And further deponent saith not.

(Signed) HARLEN H. PARMENTER.

State of Illinois, }
County of Cook. } ss.

HARLEN H. PARMENTER, being first duly sworn, upon oath deposes and says that the above and foregoing affidavit, by him subscribed, is true to the best of his knowledge, information and belief.

(Sgd) HARLEN H. PARMENTER.

Subscribed and sworn to before me, a Notary Public, this 15th day of April, A. D. 1909.

(Sgd) DAVID F. ROSENTHAL,
(Seal) *Notary Public.*

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Hearing continued April 29 and 30, 1909.

Thereupon said Levy Mayer then and there proceeded with his argument in support of said motion to amend said removal petition, and during the course of said argument contended that upon the application for leave to amend the removal petition there could be no controversy or issue of fact, and said:

"None (issue of fact) has been tendered here and none could be tendered on this application."

Thereupon he was interrupted by Mr. George F. Harding, who said:

"That is a great mistake. We are going to file our answer in a moment. You have offered your petition and we shall file our answer.

Mr. Mayer: It would be remarkable I say your Honor if we shall open our case on one state of the record, and then when I am through be met with another record. The practice your Honor is if they wish to take issue on the citizenship by plea in abatement, when there will be a trial before a jury, or by a master or before the court.

The Court: Or they may raise it on a motion to remand.

Mr. Mayer: Or motion to remand. But then that raises an issue of fact, which is heard—I do not know what your Honor's practice is,—which is heard in various ways. There is no certain practice. Some courts refer it to a jury, some courts refer it to a master, and some courts hear it in open court; but on the application to amend, the issue raised by motion to amend, no issue of fact can be made. If we are entitled to amend, then the petition will stand as though it had contained that allegation, your Honor, when it was filed. And they make a motion to remand, and can support it by an issue of fact, which your Honor will hear and determine."

The Court further certifies that nothing further was stated at this stage of the hearing by complainant, or on complainant's behalf, with reference to his filing or being desirous of filing, or presenting an answer to the motion to amend the removal petition, and no answer was at this time presented or filed by complainant.

Mr. Mayer then proceeded with his argument, but before the conclusion of the same the further hearing of said motion to amend said removal petition was continued until 10 A. M. April 29th, 1909, and at said hour on said date the further hearing of said motion was again continued to 3:30 P. M. April 30th, 1909.

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The Court further certifies that at 3:30 P. M. April 30th, 1909, the hearing of said motion to amend said removal petition was resumed, counsel for said complainant and for said Corn Products Manufacturing Company being present. Immediately upon Mr. Mayer's resuming his argument on behalf of said motion, the following occurred:

George F. Harding and William J. Ammen, Solicitors for complainant presented and offered in evidence a printed pamphlet entitled:

> "Statement of record, and proceedings, together with objections, and affidavits, and points and authorities, in opposition to defendant's petition to amend removal petition, submitted by counsel for the plaintiff under special appearance, for the purpose only of objecting to the said petition for leave to amend and while reserving to the plaintiff his objections to the jurisdiction of this court as stated in his motion filed December 23, 1907, to remand the cause to the state court."

Messrs. Mayer and Calhoun, solicitors for said Corn Products Manufacturing Company objected to said offer for the reasons advanced by them that the complainant is not entitled to file or offer said printed pamphlet or anything therein contained in evidence; that no issue of fact can be made upon the motion to amend said removal petition, and because no copy of said printed pamphlet, or anything therein contained, had been served on said Corn Products Manufacturing Company, or its solicitors, and because the admission of said printed pamphlet, or anything therein contained, in evidence would change the state of the record, as it was when the hearing of and the argument on said motion to amend said removal petition began on April 23rd, 1909.

Argument on the various matters ensued and the court took the same under advisement until 9:30 A. M. May 1st, 1909, at which hour and date the hearing of said motion was resumed, all counsel for said complainant and said Corn Products Manufacturing Company being present.

The Court ruled that he would not at this time consider any affidavits presented or offered by said complainant on the question of fact raised by the motion to amend said removal petition, but that he would permit said answer to the petition to be filed, because said answer "sets up the whole situation and circumstances and appeals to the discretion of the court," and the Court further ruled that in view of the fact that said answer had just been presented to the court during the course

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Complainant's objections and answer filed May 1, 1909, to petition to amend removal petition.

of the argument of Mr. Mayer yesterday afternoon, and towards the close of his argument, that he would permit a reply to be filed on behalf of said Corn Products Manufacturing Company to said answer, said reply to be filed in the course of a few days, as soon as the same could be prepared by counsel for said Corn Products Manufacturing Company.

The Court further certifies that it was not until the first day of May, 1909, that a copy of the said pamphlet so offered by the solicitors for the complainant was served upon counsel for said Corn Products Manufacturing Company,—such copy being now and for the first time delivered to counsel for the Corn Products Manufacturing Company, by the solicitors for the complainant.

The Court further certifies that he examined said printed pamphlet and permitted to be offered in evidence that part entitled "Objections and answer to the petition or motion of the Corn Products Manufacturing Company, filed herein on April 16, 1909, for leave to amend the removal petition in said cause," and which part covers pages 88 to 108, both inclusive, of said printed pamphlet. Said pages are as follows:

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding, *Complainant,*	
vs.	In Chancery.
Standard Oil Company of New Jersey, *et al.*, *Defendants.*	No. 28,865.

OBJECTIONS AND ANSWER TO THE PETITION OR MOTION OF THE CORN PRODUCTS MANUFACTURING COMPANY FILED HEREIN ON APRIL 16, 1909, FOR LEAVE TO AMEND THE REMOVAL PETITION IN SAID CAUSE.

Your complainant, George F. Harding, appearing herein specially and for the purpose only of objection to the jurisdiction of the Court in this cause as stated in his motion filed herein on December 23, 1907, to remand said cause,

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and objecting and insisting that this Court has no jurisdiction of this cause, or over this complainant and has no power or authority or jurisdiction to allow or even entertain the said motion or petition for leave to amend, and without consenting to the removal of this cause to this Court, and still insisting upon his motion to remand the same, your complainant by way of further answer and objection to the said parties [petition] for leave to amend, shows unto your Honor the Honorable Kenesaw M. Landis, and represents as follows:

1. Your complainant objects to the hearing of the said petition for leave to amend, and to the granting of the same, and in support of these objections your complainant refers to the files and record in the case of the Chicago Real Estate Loan & Trust Company against the Corn Products Company, and others, being case No. 28695, in this Court, and also to the proceedings in the United States Circuit Court of Appeals, in and for the Seventh Circuit, in said cause, including, particularly, the opinion and judgment of the said Court of Appeals on the appeal prosecuted by your complainant, and others, from the injunction order entered by this Court in said cause No. 28695 in December, 1907, on the motion or petition of Levy Mayer, as one of the solicitors for defendants in said cause, as appears from the records of this Court and of said Court of Appeals in said cause No. 28695, to which records reference is hereby made and the printed transcript thereof filed in the said Court of Appeals and now presented with this Answer, together with the additional printed copy of the Record and opinion of the said Court of Appeals on said appeal, all of which records are hereby made an exhibit to this answer, and the same are hereby referred to in support of the objections herein made.

2. Your complainant further objecting and answering says that said motion and petition for leave to amend are forbidden and enjoined by the said order of this Court entered in December, 1907, in said cause No. 28695, to which reference is hereby made as shown on pages 112-114 of said printed Transcript of Record, from which order said complainant quotes as follows, namely:

> "Wherefore, the premises considered, it is hereby ordered, adjudged and decreed that said George F. Harding, George F. Harding, Jr., William J. Ammen, and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solicitors and representatives be, and they hereby are, jointly and severally restrained and en-

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joined until the further order of this Court, from further prosecuting or taking any steps or proceedings of any kind in said case of said George F. Harding *vs.* Standard Oil Company, of New Jersey, Corn Products Refining Company, *et al.*, which was instituted in the Superior Court of Cook County, Illinois, on October 19th, 1907, and was numbered therein, 263,565, and which case was subsequently docketed in and is now pending in this Court as case numbered 28865."

And no further order has been, or could be made or can now be made properly herein by this Court, because the said injunction order above quoted from has ever since remained and still is in full force and effect, and the appeal therefrom as shown in said printed transcript is still pending in the said Court of Appeals, and was so pending, when the said petition for leave to amend was presented to and filed in this Court, on April 16, 1909, at which time the hurried action of this court was wrongfully demanded by said petitioner, and its attorneys, and associate defendants, as shown by the stenographer's transcript of the proceedings of that date before Your Honor, which transcript is presented with this answer and made a part hereof as an exhibit thereto, and, upon this ground, and upon others above or hereinafter mentioned, your complainant respectfully insists and protests that this Court is without power or jurisdiction to allow or hear the said petition for leave to amend, and the same should therefore be stricken from the files, dismissed and not allowed by the Court; and your complainant further shows that this Court found and declared by the said order of December, 1907: "That the further prosecution of said suit of Harding against the Standard Oil Company should be enjoined. * * * But said Harding by an appropriate proceeding, or petition, and upon a proper showing, may apply to this Court to intervene herein or become party hereto"; and by said appeal still pending as to the action open to the parties affected by said injunction order, all of the said parties, including your complainant, and said petitioner, and other parties to said cause, were and are left without power to further proceed in this cause, or otherwise proceed in the said litigations except to apply for leave to intervene as aforesaid, and the said injunction order still remains in full force awaiting the mandate of the said Court of Appeals in said cause, and this being the state of the case as established by said records, when said petition for leave to amend was filed herein, said petition should

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be dismissed or stricken from the files and not allowed by the Court, and under the opinion and orders of the said Court of Appeals in said cause, to all of which reference is hereby made, no mandate having been yet issued by the said Court of Appeals, this Court is without power to act in the premises until the mandate of the said Court of Appeals be issued in said cause and presented to this Court.

3. Your complainant further shows that immediately on the delivery of said opinion, said Mayer, and his clients, the parties to this motion for amendment, filed in the said Court of Appeals a petition for a rehearing, a copy of which is made an exhibit to this answer, and prayed to be taken as a part thereof, and after said petition for rehearing had been made and the same was overruled, said Mayer applied for permission to file a second petition for rehearing therein, for special reasons, which was again denied, and disallowed by the Court of Appeals. That said Mayer then applied to the Court of Appeals and obtained an order to stay the mandate of the said Circuit Court of Appeals, and obtained a stay thereof until a writ of *certiorari* could be obtained from the Supreme Court of the United States or applied for the stay for application for such *certiorari* being limited to a period expiring March 29th, 1909, as shown by said additional printed copy of record; that said Mayer and clients on April 5, 1909, moved in the Supreme Court of United States for such *certiorari*, filing the petition for the same in said Supreme Court, on or about the 27th day of March, A. D. 1909, a copy of which petition for *certiorari* is made an exhibit to this answer; that your complainant having leave under the rules to reply to said petition for *certiorari* by stipulation shortened the time and filed a reply, a copy of which reply is made a part of this answer as an exhibit; and your complainant further shows that on April 12, 1909, the Supreme Court of United States denied the said application of said Mayer and associates then prosecuted in the name of the Corn Products Refining Company, one of the defendants, and the said petition for *certiorari* was denied by the Supreme Court on said date, April 12, 1909.

Your complainant then moved in the said Court of Appeals for a mandate to issue to this court from said Circuit Court of Appeals to enforce the orders directed by said opinion, to-wit: to reverse the said order of injunction and to dismiss the said cause of the Real Estate Company upon the motions made, or some of them, before your Honor on or before December 26, 1907, as more fully shown by said records.

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5. Your complainant says that said motion for mandate was resisted by said Mayer and associates under color of an application for a modification of the opinion or order of said Court of Appeals, and a printed brief was presented to said Court of Appeals for such modification a copy of which is made an exhibit to this answer, and said motion for mandate which had been submitted to the Court of Appeals, followed by said motion for a modification of the opinion or order had not been determined, though taken under advisement by the Circuit Court of Appeals when this petition for amendment was so hurriedly filed in this Court, being then still under advisement, and said mandate being stayed for the hearing and decision of said motion for modification of said opinion or order; but, although the Court of Appeals overruled said motion for a modification of the opinion or order of that Court upon yesterday, as then announced by said Court of Appeals, no decision or order of record has yet been rendered or order entered by or in that Court, within the knowledge or information of your complainant for the issue of said mandate to this Court, although all grounds of objection possible to the issue thereof have been urged by the said Mayer and decided by the said Court against him and his associates.

6. Your complainant further shows that it was thus, while all action was stopped in the Circuit Court and in the said Court of Appeals by the said Mayer and his associates, and the issue of the said mandate thus delayed, it was in this situation that counsel for your complainant was required on April 16, 1909, by order of this Court, to stipulate of record herein not to take any step in this Court *or elsewhere*, in this case, or in said case No. 28695, *until the hearing and decision of this said petition for leave to amend*, notwithstanding the pendency of the said appeal, *with said injunction of December, 1907, still in full force and effect against your complainant;* and your complainant insists that this attempt to amend, made in this position, and leave now asked to make such amendment, notwithstanding the fact that no mandate has yet been issued, or ordered by the said Court of Appeals, and while your complainant was and still is enjoined from any proceedings in either of the said suits except applying to intervene, as aforesaid, and becoming a party to the said dead case of the said Real Estate Company, is improper and grossly unfair and should be prevented and denied by the Court.

7. *It was while this state of the case continued that this petition for leave to amend was presented herein,* and in the

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absence of your complainant, a citizen and resident of the State of California, and while he was absent from the State of Illinois, and without counsel of record in this cause other than himself, and your complainant having never appeared in the case except by his motion to remand, and only appeared in the State Court by the filing of his bill herein, and the issue of process for service upon the defendants, and the issue of subpoenas to compel the defendants themselves to testify as to the matters and charges in this bill; and it was while your complainant was actually before the notary public, awaiting the attendance of the defendants, and especially those of them who had been subpoenaed as witnesses by your complainant, it was at that very time that said petition of November 4, 1907, was presented in this Court, secretly and without notice, and your complainant was then restrained, without notice, *and has ever since been restrained,* from further proceedings in this cause, as shown *by the said order of November* 4, 1907, *and the said injunction order of December,* 1907, to all of which reference is hereby made.

8. Your complainant further shows that while this was the state of the case in this Court, and in said Court of Appeals, and while no action could or should have been had, as above set forth, this attempt to amend the said removal petition has been made in the absence of your complainant, and your complainant charges that such attempt was and is a deliberate and wilful and fraudulent attempt to obtain an undue advantage by the entry of the order prayed for in the said petition for leave to amend.

9. Your complainant further shows that the removal of this cause from the State Court was secretly obtained, in defiance and contempt of the law, and of the State Court, and without right; and your complainant did not even learn of such removal to this Court until long afterwards, namely, after November 12, 1907, or on that date, upon the hearing pursuant to which the said order of December, 1907, was entered by this Court; and when your complainant first learned of said removal he had already been enjoined and restrained from taking any action in this case by said order of November 4, 1907, obtained secretly and without notice, as above set forth; and promptly after learning of said removal, your complainant applied to Your Honor, and repeatedly so applied, to hear your complainant's motion to remand this cause to the State Court, as shown by said printed transcript of record, to which reference is hereby made, and your complainant

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other orders in the second case on motions to remand or any motions in the second case."

Mr. Harding: "We want an order overruling it. We have filed the motion. We cannot take anything up. The cases are independent upon this record except in the opinion of your Honor. We moved to remand long before the entry of this order" (of December 13-26th) "and now we only want an order upon that motion" (to remand), "if you say it is too late or whatever you are pleased to say."

The Court: "Did you ask me to remand before this court came—"

Mr. Harding: "During the hearing" (November 13th).

The Court: "While this matter was being heard—this motion in the first case being heard?"

Mr. Ammen: "Yes, in this respect, I remember this one thing that occurred. We asked your Honor if we could give notice—"

The Court: "Afterwards."

Mr. Ammen: "That was pending this hearing."

The Court: "Now, you came here after the matter had been submitted to the Court on this application."

Mr. Ammen: "Yes, before the decision."

The Court: "Yes, now, the view of the Court in this matter is this, as I have indicated four or five times. The view of the Court is that this order restraining the parties from going on with the first case applies to the parties here and in the State Court and anywhere, *going on in the second case.*"

Mr. Ammen: "In our draft of the order" (December 13-26) we asked that this be without prejudice to the motion to remand."

The Court: "I won't enter that order."

Mr. Ammen: "I merely want to call the Court's attention (Nov. 4) to that. After they got this injunction from Judge Kohlsaat and ruled us to show cause why this second suit should not be restrained, they removed the second case to this court. Now, the view of your Honor is that although they took that step after they got that restraining order, we must leave it there. Are we not liable to be thus prejudiced in that suit?"

The Court: "Not if you read the order of injunction. The motion to take up these other matters may come along when this motion, when this order which the Court has entered has been modified under an order of a Court authorized to give instructions to this Court."

Mr. Harding: "It will show our several motions to dismiss."

The Court: "You have made several motions. Said several motions to dismiss filed herein are hereby referred to and made a part of this certificate of evidence."

Mr. Harding: "And the motion to remand?"

The Court: "I have said at least a half dozen times that that motion to remand I would not hear. This order enjoining the parties in the first suit from prosecuting the second suit or going on with the second suit covers a motion to remand as plainly as it covers any other sort of a motion in the second case. Do you understand that proposition?"

Mr. Harding: "But who understands that in that record? If we take up the second case, the motion to remand is found there. There is no order made upon it and no order made in that case at all. Isn't it a very easy thing for your Honor to say that you have already overruled it, if—"

The Court: "My view of this situation is such that I don't think you have a right to be going on with these two suits at once, in the Federal Court and State Court, or anywhere else."

Mr. Ammen: "In order to prevent our being prejudiced ought not your Honor in this present order specifically to state, so that there can be no controversy, that it does enjoin our proceeding with the motion to remand?"

The Court: "If you desire it to specifically state that."

Mr. Ammen: "We think that in order to protect us fully from our neglect or failure to push that motion—"

Mr. Ammen [Mayer]: "It is in the second suit. * * * The motion to remand in the second suit is here on file. You are not disposing of that motion, you are entering no order in the second suit."

The Court: "I am entering an order in the first suit, that there shall not be even a motion to take up the motion to remand."

Mr. Harding: "That is all right. I only want your Honor to say so, otherwise Mr. Mayer will say there was no order."

Mr. Ammen: "All we want is to make sure that your Honor states in the record specifically what you hold."

The Court: "I will do whatever Judge before whom it comes up the justice to assume that he will understand" (Record, p. 332).

11. Your complainant further respectfully shows unto your Honor that the said injunctional order of December, 1907,

was meant by your Honor to have the force and effect stated by your Honor, in the extracts just given from the record, where we quote from the certificate of evidence, and it must import verity as agreed to between all parties, and has the signature of the Court itself; and your complainant submits that this motion to remand has therefore been pressed upon your Honor ever since the removal of the case from the State Court was known to your complainant, and was urged up to the very latest hour, and your Honor has seen fit to hold that a remand of this case should not be allowed in entering the said order of injunction, according to your Honor's interpretation of that order, and your Honor's action, and there can be no doubt about this by the record itself. Your Honor's attention is called therefore to the fact that the said petition for removal, of November 6th, 1907, was based upon the fact stated in said petition, in which are not contained the matters referred to and now sought to be placed in such haste in said petition a year and a half afterwards; and after this struggle for a year and a half over the rightfulness of said removal upon said petition, and that it was never suggested in the whole course of the case until after the Court of Appeals had put an end, with the assistance of the Supreme Court of the Unietd States, to the pretence that this removal ought to have been obtained, in view of *ex parte Wisner* aforesaid, and the act of Congress prohibiting said removal; and it is the latest desperate effort of the defendants herein to wrongfully maintain this dead case in this court, or to defeat and delay justice so long delayed.

12. Your complainant further shows unto your Honor that this petition for leave to amend alleges falsely that George F. Harding is not a resident or citizen of California, and is a resident and citizen of the State of Illinois, and was such a resident and citizen on October 19th, 1907, when this bill was filed, and this present petition for leave to amend purports to be filed by the Corn Products Manufacturing Company, and is not sworn to except by one Frederick E. Fisher, as president, and he merely states what he does upon information and belief, without a pretence of knowledge; the language of said Fisher being that said petition is true to the best of his knowledge, information and belief; and that he makes this affidavit on behalf of the said company. The said Levy Mayer appends a statement that he prepared the petition for removal, which alleges, and is sworn to or joined in, by all the parties as true, in which it is declared by the 19 de-

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fendants, that said Harding was a resident and citizen of the State of California and a citizen of no other state at the time of filing this bill; and said Mayer states that he was an attorney for said Corn Products Refining Company, and said Corn Products Manufacturing Company and Corn Products Company, three of the defendants, and prepared and caused to be filed the petition for removal; but, he does not pretend that he was attorney for any other of the 17 co-defendants, nor upon what ground, or for what reason the other co-defendants joined him and in the case of the Standard Oil Company, it "consented" to said petition for removal, and all alleged the truth of said petition and the residence of said Harding to be in California; and said Mayer only says it was due to the misinformation under which he then labored, derived from the very statements in the original and amended bills as to the residence of said Harding, but does not pretend that he has any knowledge of the subject nor that the other parties were induced by any misinformation to make their affidavits or join in said removal petition. The affidavit of Harlen H. Parmenter, an unknown man, who makes an affidavit of the conclusions which he reached upon investigation as to the residence of said Harding, but he swears only that the affidavit by him subscribed "is true to the best of his knowledge, information and belief"; so that there is nothing in the statements of said petition, nor of the affidavits appended to said petitions, which explains or controverts the facts alleged as to all the parties, and that only upon information and belief. And there is nothing to show but they believed them to the extent, as they had, during the whole progress of the case for a year and a half, that the complainant was and is a citizen and resident of the State of Illinois; and nothing to show that any of the other parties have any knowledge of even the limited number of facts set forth in the petition, every one of which would be susceptible of statement directly by some one who knows the facts or to be shown by statements directly and could then be weighed when so stated by a Court as ground for action.

13. Your complainant further alleges that the truth is as stated in said bill as to the residence of said complainant, and it was untrue that he was, as alleged in said petition, and affidavit, namely: that he was not a citizen or resident of the State of Illinois on October 19, 1907, when this bill was filed in this cause; but the contrary is shown by the affidavits of Colonel Joseph H. Strong, and Doctor DeVeny, and others, all old neighbors and associates of your complainant when

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your complainant resided in Illinois and men of the highest character, and most fully informed in relation to the matters mentioned in said affidavits, and also by the affidavits of A. C. Snyder, Addie C. Harding, Anna M. Burson, Frieda Hartman, Ellen Harding, E. Sanders, John L. Zweck, Abner C. Harding, George F. Harding, Jr., Charles B. McCoy, Gregory T. Van-Meter, Albert B. Joyner, Ada E. White, and William J. Ammen, all of which affidavits are presented with this Answer and objections, and made a part hereof, and exhibits thereto in support hereof.

14. Your complainant further states that for a period of more than ten years just prior to the filing of this Bill of Complaint by him in this cause he was not a citizen or resident of the State of Illinois; that he gave up his former residence and citizenship in Illinois more than ten years before this Bill of Complaint was filed, and then became, and has ever since remained and still is a citizen and resident of the State of California, and was a citizen and resident of the State of California on October 19, 1907, when he filed this bill in this cause; that during the ten years last past he has been in the State of Illinois only occasionally, and for brief periods only, and then only when his presence in Illinois was required by necessity, or for a visit with his friends, or relatives, and at long intervals, and your complainant has never at any time since he became a citizen and resident of the State of California, as above stated, made or considered a return to the State of Illinois with any intention or purpose of again becoming a citizen or resident thereof, but has always intended and still intends to maintain and preserve his said residence and citizenship in the State of California; and during the period of more than ten years last past whenever in making deeds, or other instruments of writing, or in registering at hotels, as he has had occasion to do for perhaps a thousand times during said period, he has always stated in such instruments and upon such hotel registers his residence as San Diego, in the State of California, and the facts as to the residence and citizenship of your complainant are more fully stated in the said affidavit of your complainant, entitled in this cause presented with this Answer and objections, and made an exhibit thereto and a part thereof.

15. Your complainant further states that for some years past the condition of his health has been such that he has been under the constant care of physicians in sanitariums and health-resorts abroad and within that period of his life was

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twice given up by said physicians, and by such illness he was required to remain for some years in Europe under the care and direction of said physician, and did not return from abroad until in or about July, 1907, and your complainant then spent some months in Chicago, Illinois, preparing this bill of complaint, and preparing to prosecute and maintain the same, which was required in order to rescue the property of himself, and his fellow stockholders in the Corn Products Company, from the malefactors made defendants thereto.

16. Your complainant further shows that this petition to amend said removal petition is merely a fraudulent attempt on the part of the defendants to this bill to prevent proof of the facts set forth in the bill showing that they have seized in defiance of law and of right some $20,000,000 of property, and they are asked by the bill to permit proof to be made in support of such charges, and in the effort to make such proof by the testimony of the defendants themselves your complainant was actually engaged on November 4, 1907, at the very hour when the first attempt was made by the defendants by said petition of November 4, 1907, *ex parte* and without notice as above set forth, to defeat and delay justice and compel this case to be transferred to this Court and appended to the said dead case in the Federal Court.

17. Your complainant further states and shows unto Your Honor that he denies the right or power of the Court to make the order of amendment for which the petition asks, or grant such leave to amend; and your complainant shows that it would be a great injustice and entirely without precedent to permit the progress of this case to be stopped and stayed by an investigation of the residence and citizenship of this complainant, so long undisputed, upon no other basis than the information and belief of the unknown Parmenter whose conclusions and opinions stated in his affidavit are of the most general description, and false and absurd, and should be disregarded, and the same are entirely untrue as alleged by your complainant, and by a host of witnesses, some of which, nearly twenty in number, know the facts; not one of which facts are stated as known to be true to the knowledge of any party mentioned in the petition for the amendment or in any affidavit attached thereto; and upon such slender foundation the progress of any case may at any time be stopped to the great prejudice and injury of suitors; and it is important for this Court to know that in the presence of this Court the solicitor and attorney, said Mayer, who has had the conduct of all this

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litigation, as he claims, for a part of the clients, has stated his determination, and inobedience to the request of his clients, to litigate every question connected with the litigation, and who has as the said records show, made the most desperate attempts, at every point, in the case, and in said case No. 28695, to delay and defeat justice, and on grounds which, when investigated, are found to be without any foundation and without the slightest merit.

18. Your complainant further shows unto Your Honor that the Corn Products Manufacturing Company is a criminal corporation under the laws and judgment of the Courts of this State and especially of the Supreme Court as shown in the case of George F. Harding, and the Chicago Real Estate Loan & Trust Company against the American Glucose Company, and others, 182 Ill., 531, including the Glucose Sugar Refining Company, the name of which corporation is alleged to have been afterwards changed, and it is now known by the name of the said defendant, and it now is the petitioner to this Court for this very amendment, to-wit, the Corn Products Manufacturing Co.; and this extraordinary proceeding is conducted by the said Levy Mayer, who was condemned in the said case and by said Supreme Court of Illinois, being the promoter and manager of the great crime against our laws therein attempted, as the reported case will more fully show; and these parties are the very last persons who are entitled to the indulgence of the Court.

Wherefore, and for other reasons, your complainant prays that the said petition for leave to amend said removal petition may be stricken from the files by order of this Court, or dismissed, and wholly disallowed and denied, and your complainant will ever pray, etc.

(Sgd.) GEORGE F. HARDING,
Complainant.

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STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

George F. Harding, being first duly sworn, states on his oath that he is the person whose name is subscribed to the foregoing Answer and Objections, that he has read the same and knows the contents thereof; that the same and the matters and things therein stated are true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true. Further affiant saith not.

Dated this 22nd day of April, A. D. 1909.

(Sgd.) GEORGE F. HARDING.

Subscribed and sworn to before me this 22nd day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,
(SEAL) *Notary Public in and for Cook County, Ill.*

Affidavits in support of "Objections and Answer," not admitted.

The Court further certifies that what are entitled "Affidavits" and which are contained on pages 109 to 146, both inclusive, of said printed pamphlet he refused to receive in evidence. Said affidavits are as follows:

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AFFIDAVITS.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding, *Complainant,*	
vs.	In Chancery.
Standard Oil Company of New Jersey, *et al.,* *Defendants.*	No. 28,865.

George F. Harding, the complainant in this cause, being first duly sworn (in reply to the petition or motion of the Corn Products Manufacturing Company presented with affidavits, etc., by Levy Mayer for leave to amend the removal petition in said cause) deposes and says:

That this affiant was not a citizen or resident of the State of Illinois on Oct. 19th, 1907, when his bill herein was filed, in the Superior Court of Cook County, Illinois, and for more than ten years just before said bill was filed affiant had not been a citizen or resident of the State of Illinois; that affiant gave up his former residence and citizenship in the State of Illinois more than ten years before said bill was filed, and then became and ever since has been and now is a citizen and resident of the State of California, and was a citizen and resident of California on October 19, 1907, when he as complainant filed the said bill in this cause; that affiant has been in the State of Illinois, occasionally, only, and for brief periods, within such ten years last past, and always during said period his presence in Illinois has been due to necessity, or a wish to visit his friends, and at rare intervals; and affiant has never at any time since the year 1895 made or considered a return to Illinois to become a citizen or resident thereof, but has always since the year 1895 intended and still intends to retain and preserve his residence and citizenship in the State of California.

Affiant further states that affiant went to and selected San Diego, California, as his place of citizenship and residence, more than ten years ago, chiefly because his only sister had resided in said city of San Diego for many years prior thereto, she having urged him to come there at what then seemed to be, apparently, about the close of their mutual lives, both then being near the age of seventy years, and suffering from the infirmities of age. And affiant lived with his said sister and family there, in a house in San Diego, in said State of California, in 1895, 1896 and 1897, leased to him on his arrival there, in 1895, and, later, bought by this affiant; and it was nearly three years thereafter when this affiant brought the suit so fully set forth in said petition, etc., for divorce, against his wife for her desertion of ten years before; said suit for divorce by him was begun in California immediately after the decree of the Circuit Court of Cook County, Illinois, for alimony in her suit which had been begun by her in February, 1890, for divorce, and, finally, changed, of record, for separate maintenance, and affiant at once, namely, in the fall of 1897, caused her to be served with summons in his said suit for divorce and she at once appeared therein and has defended said case ever since 1897, and said case is still pending and undetermined in the State of California, and one of the defenses made by her, and unsuccessfully made, in that suit was that this affiant was not a resident of California before and at the time of the filing of said bill for divorce and upon this issue, among others, said cause was heard and decided in favor of this affiant by a chancellor of great prominence and ability after a full hearing and a trial of nearly a month, she putting in the testimony of over thirty witnesses, through and under the care and management of the ablest and most prominent attorneys of California and many of said witnesses on both sides were personally called, upon this very issue of nonresidence which was determined in favor of affiant on the merits by said Chancellor in said cause and upon her appeal to the Supreme Court of California in that cause from said findings and decree of said Chancellor, the several issues including that of nonresidence were fully urged, and again determined by said Supreme Court in favor of this affiant and said decree of the Chancellor was affirmed in said cause by said Supreme Court, as shown by the report of that case in the Supreme Court of California—Harding *vs.* Harding, 140 Cal., 690; and as shown in and by that opinion there was a careful and full affirmance of said Chancellor's decree and his

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determination of the questions on all of said issues; and in that case the Supreme Court of California held that the intention of the party as to his residence was the material question, citing, among other cases, 124 Cal., 688, and (in the United States Supreme Court) *Chicago Railways Company* v. *Ohle,* 117 U. S., 123, and in the Supreme Court of the United States in said case of *Harding* v. *Harding* (198 U. S., 331), where it obtained jurisdiction upon the claim only that full faith and credit had not been given to the said Illinois decree, and decided nothing but that question of law, viz.: whether said Illinois decree was entered by consent and was therefore not final; and the Supreme Court of California in the same case, 148 Cal., 398, where the case was sent by direction of said United States Supreme Court for "proceedings not inconsistent with this opinion," determined that said complainant therein could show any facts in reply to "those alleged in the answer in support of the estoppel or anything which legally avoids the estoppel." Hence, this affiant says that in that case the findings of the Chancellor upon the merits, and upon this very issue of residence, still stand and the only question remaining there is that of estoppel by the Illinois decree, and the question of affiant's residence in California remains as already determined in the complainant's favor in that case, as above set forth.

Affiant further states that for some years last past the condition of affiant's health has been such that affiant has been under the care of physicians, in sanitariums and health resorts abroad, and thus prevented from enjoying the beautiful climate of his said residence in California, under the advice of his physicians; and, on his returning from Europe to America in 1907, this affiant found it necessary to prepare this bill, and prosecute and maintain the same in order to rescue the property of himself and his fellow stockholders of the Corn Products Company from the malefactors made defendants herein; and their efforts to defeat and delay justice will appear and is partly shown by the record of the case of the Chicago Real Estate Loan & Trust Company *vs.* the Corn Products Manufacturing Company, and others, in this Court, and in the Court of Appeals, and that record this affiant desires to be made part of this affidavit for greater clearness and certainty.

Affiant further states that said Levy Mayer procured the restraining order of November 4 and afterwards the injunction order of December 13-26, against the affiant and others

upon sundry deductions made by him to the court on the hearing of November 12 and 13, 1907. Said Mayer then addressed this court as the attorney and agent of all the defendants in both cases, and especially of said petitioner by making this motion, viz.:

"Mr. Mayer: No. Don't seek by interrupting, if you please. You will see, your Honor, that George F. Harding the complainant in this second suit, was the president of the Chicago Real Estate Loan and Trust Company, and owned and controlled it, and today owns and controls it, but that his son is named as the president, George F. Harding, Jr., and that made the change in the personnel of the corporation, and when, a few years ago, Harding, Senior, got into litigation with his wife, he changed his residence to California" (Rec., p. 175).

"Mr. Mayer: George F. Harding brought some four appeals to the Appellate and Supreme Courts. In all these cases, the counsel who appear for him here appeared for him there, and all of a sudden Harding, who was born in Illinois, some seventy years ago, changed his residence to California and became a citizen of the Golden State, and he was not a citizen of Illinois, and therefore he filed a bill there for divorce against his wife, who had pending here her separate maintenance proceedings, and he secured his divorce against his 70-year-old wife on the ground of alleged desertion" (Rec., p. 176).

Mr. Mayer: "In 1893 or 1894 the State Court referred the case to a Master, and the litigation went through the Appellate Court twice or three times and to the Supreme Court twice. In 1894 he was President of the Real Estate Company and in 1893 *this stipulation was filed by him.* In 1896 a decree of alimony was rendered.

"*Thereupon he moved to California, and there filed a bill for divorce.* Now the next thing was the attempt of the wife to get her alimony. I think there were three appeals to the Appellate Court and two to the Supreme Court after this first litigation. Then he moved to California and there sued his wife for divorce on the ground of desertion. The California Court gave him a decree, and it was taken to the United States Supreme Court and reversed on the ground that the California Court had violated the Constitution of the United States. That is the exact language of the Supreme Court:

"'This being the case it follows that the Supreme Court of California in affirming the judgment of divorce failed to give

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to the decree of the Illinois Court the due faith and credit to which it was entitled, and thereby violated the Constitution of the United States.'" (Rec., p. 210.)

Affiant further states that said Mayer, on November 4, 1907, over his own signature, as an attorney and under the oath of his clerk and alleged agent of the Corn Products Refining Company made the following declaration, to which said Bangs attached his affidavit, viz.:

> "That said George F. Harding was, as your petitioner is informed and believes, born in the State of Illinois, and that he is now over 70 years of age, and that he has continuously, during his life, been a resident and citizen thereof, until he moved to California, wherein he instituted proceedings for a divorce against his wife, and which proceedings are the same proceedings referred to in *Harding* v. *Harding*, 198 U. S., 317" (Rec., pp. 74-5).

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Hal C. Bangs, being first duly sworn, upon oath deposes and says that he is the agent in this behalf of said Corn Products Refining Company; that he is familiar with said litigation and has made careful, exhaustive and diligent search into the facts and circumstances detailed in the above and foregoing motion; that all the facts therein stated, except the facts therein alleged upon information and belief, are true, and as to the facts therein alleged to be upon information and belief, he believes the same to be true.

HAL C. BANGS.

Subscribed and sworn to before me, a Notary Public, this 4th day of November, A. D. 1907.

FRANCIS E. MATHEWS,
Notary Public.

(Rec., p. 76).

That these deductions of Mayer and his clerk make incredible this present petition to amend the petition for removal, and they contradict the said petition for amendment and the affidavits of the Corn Products Manufacturing Company, and especially the affidavit of Levy Mayer, and render the affidavit of said Parmenter a ridiculous falsehood, unworthy of consideration and beneath notice.

Affiant further states, viz.: That he was admitted as a citizen of California to practice law as an attorney in said state after a hearing and motion in Supreme Court in San Francisco, in 1901 or 1902, and a formal license and certificate were issued to him to that effect at the time; that it was, in effect, the decision and declaration by the Supreme Court of California of his citizenship in said state, upon which finding said admission to the bar was based and allowed, under the statute of said state.

Affiant further states that the statements in the said petition for leave to amend, and in the affidavits therewith filed by Levy Mayer, and others, herein, in conflict with this affidavit are all untrue; and, on their face, said affidavits, as to all material matters are made upon information and belief, only; and relate to the investigations of a person named *Parmenter whom this affiant has been unable to find,* and which judged by his false and absurd conclusions and opinions stated in his affidavit should be disregarded, and the same are untrue.

Further affiant saith not.

Dated this April 22nd, A. D. 1909.

(Sgd.) GEORGE F. HARDING.

Subscribed and sworn to before me on this 22nd day of April, A. D. 1909.

(SEAL) (Sgd.) ALICE WILLNER,
Notary Public in and for Cook County, Ill.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, *et al.*, *Defendants.*

George F. Harding, Jr., being first duly sworn, deposes and says that he is a son of George F. Harding, complainant in the above entitled cause; that affiant was born in Chicago, Illinois, August 16, 1868, and has, at all times since, resided in said City; that in or about the year 1895 said complainant ceased to be a resident, or citizen of the State of Illinois, and then became a resident of the City of San Diego, California, and a citizen of said State of California, and shortly thereafter purchased a residence in said City of San Diego and that at all times since 1895, said George F. Harding has claimed to be a resident of said City of San Diego, and a citizen of said State of California; that in or about 1899, said George F. Harding, by reason of his then being a nonresident of the State of Illinois, as aforesaid, ceased to be a member of the Chicago Literary Club, Washington Park Club, Calumet Club, and other clubs of said City of Chicago, of which said Clubs said George F. Harding had theretofore been a member.

That prior to the time of his becoming a resident of said City of San Diego, and a citizen of said State of California, as aforesaid, said George F. Harding was always active in politics and voted at primaries and elections held in said City of Chicago, but that since the year 1895 said George F. Harding has not voted at any election, or primary held in said City of Chicago, or in said State of Illinois, and for many years last past the name of said George F. Harding has not appeared in any City Directory, of said City of Chicago, as a resident thereof.

That affiant has at various times since said George F. Harding became a resident of said City of San Diego, as aforesaid, prepared and has caused to be prepared many affidavits, deeds, and other instruments to be executed and which were actually executed by said George F. Harding and the residence of said George F. Harding when mentioned therein was invariably stated to be San Diego, California; that it is and has been a matter of common knowledge among the friends, relatives and acquaintances of said George F. Harding that he, said George F. Harding, is and has been continuously for many years last past a resident of said City of San Diego, and a citizen of said State of California.

That during ten years last past said George F. Harding has been in said City of Chicago, or in the State of Illinois very seldom for short periods for the purpose of visiting friends and relatives and then only or when his presence was required by litigation, or business, wherein said George F. Harding was interested as attorney, or as a party in interest, and when in said State of Illinois has visited at the residence of affiant in Chicago, or stopped at some hotel or club of said City, and has not at any time during said period had or maintained a residence in said City of Chicago, or in said State of Illinois.

That during said period affiant has received many letters and communications from and addressed many letters and communications to said George F. Harding when he, said George F. Harding, was at his said residence in said City of San Diego, and that during said period when affiant did not know the address of said George F. Harding he, affiant, addressed letters and communications to said George F. Harding at said City of San Diego and the same were forwarded from there to said George F. Harding and during said time affiant shipped or caused to be shipped to said George F. Harding at said City of San Diego, personal property belonging to said George F. Harding.

That about four or five years ago said George F. Harding, then being very ill, visited Europe upon the advice of his doctors for the purpose of benefiting his health; that while in Paris he underwent a severe operation and was confined to his bed for many months thereafter as a result thereof, and did not recover sufficiently to be able to return to America for a period of more than two years thereafter.

Affiant further states that said George F. Harding was not on the 19th day of October, 1907, and had not been for many years last prior thereto, and has not since said date been a

citizen or resident of the State of Illinois but in or about the year 1895 said George F. Harding became and has ever since remained and still is a resident of the City of San Diego, and a citizen of said State of California.

Further affiant saith not.

(Sgd.) GEORGE F. HARDING, JR.

Subscribed and sworn to before me a Notary Public, by said George F. Harding, Jr., this 20th day of April, A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION. } ss.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, *et al.*,
Defendants.

Abner C. Harding, a resident of Chicago, Illinois, of lawful age, son of George F. Harding, Complainant in this case, first being duly sworn, says he knows of his own knowledge that George F. Harding, complainant in this case, ceased to be a resident or citizen of the State of Illinois about twelve years ago, at which time he took up his residence in San Diego, California, with his only sister, my aunt, and has never reacquired any residence or citizenship in Illinois.

Affiant has drawn and joined in numerous deeds and mortgages and instruments during this period and said George F. Harding has always described his residence as being in San Diego.

Letters and communications addressed to him at various times when in San Diego, California, were received by him and acknowledged.

George F. Harding's appearance and sojourn in Illinois for

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the last ten years has been almost wholly controlled and confined to short stays here occasioned by the necessities of litigations requiring his presence as counsel or necessary witness. When his presence was not immediately required he remained elsewhere very much controlled by his physician's advice.

Up to the time of the preparation of this bill begun in August, 1907, and finished on October 19th, 1907, he had been abroad about three years, during which time his life had been despaired of and his return to health doubted by all.

(Sgd.) ABNER C. HARDING.

Subscribed and sworn to, before me, a Notary Public, by said Abner C. Harding, this 21st day of April, A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding, *Complainant,*
vs.
Standard Oil Company of New Jersey, *et al.*, *Defendants.*

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Charles B. McCoy, being first duly sworn on his oath deposes and says: That about thirty years ago he was for some years a clerk for the law firm in Chicago of which George F. Harding, Sr., was the senior partner, and has known him and had business relations with him more or less frequently ever since that time, and particularly since the summer of 1895.

That since about the year 1895 he has occupied a desk in

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the office of his son, George F. Harding, Jr., and during all that time since the year 1895 he has understood that the legal residence and home of George F. Harding, Sr., was in San Diego, California. That during probably every year of that time until the last four or five years affiant has corresponded with him there, many times forwarding to him and receiving from him legal papers and documents concerning pending business matters.

That for the last four or five years George F. Harding, Sr., has been much of the time in Europe on account of ill health and affiant has corresponded with him more or less continuously, but that affiant's understanding was that he still retained his legal residence in California and has been there part of the time when circumstances permitted.

That since the year 1895 George F. Harding, Sr., has been in Chicago or in the State of Illinois very little of the time and only when called here by business matters or pending litigation requiring his personal attendance, several times having been called here by letter or telegram, and at such times when in Chicago has been a guest at the home of his son, George F. Harding, Jr., coming to the office of his son occasionally when necessary, but his visits being brief, sometimes remaining only a few days and at no time more than a few weeks in Chicago.

That from his knowledge of the circumstances affiant believes himself to be fully informed as to the facts and verily believes that since the year 1895 the legal residence and home of said George F. Harding, Sr., has been in San Diego, California; and further affiant saith not.

(Sgd.) CHARLES B. McCOY.

Subscribed and sworn to before me, a Notary Public, by said Charles B. McCoy, this 21st day of April, A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,
Notary Public.

(SEAL)

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Gregory T. Van Meter being first duly sworn states, on his oath: I was in the employ of George F. Harding from the year 1886 up to the time of his departure for San Diego, California, when he took up his residence there, being in or about the year 1895, that since that time I have been in the employ

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of George F. Harding, Jr., as agent and officer of the Chicago Real Estate Loan & Trust Company; that I have drawn up many papers, affidavits, deeds and legal instruments for said George F. Harding to sign during the last twelve years, stating therein that his residence was San Diego, California.

Affiant further states that George F. Harding since he became a resident of San Diego, California, in or about 1895, has spent very little of the time in Chicago, and only then when compelled to on account of litigation or business, and then only for brief periods of time, leaving as soon as the litigation or business would permit.

Affiant further states that he always understood and heard that George F. Harding left for California, and took up his residence at San Diego, California, on account of ill health, and on account of his only sister and her family living there, and on account of the doctor's advice that the climate of Chicago was bad for his health.

Affiant further states that he has addressed many letters and communications to George F. Harding at San Diego, California, and received answers to same from him dated and mailed at San Diego, California, during said period.

Affiant further states that dozens of such affidavits, deeds and papers have been recorded in the Recorder's office in this county and state by me during the past ten or twelve years, and all of these recite said George F. Harding's residence, as San Diego, California.

Affiant further states that it has been and is a matter of common knowledge among the friends, acquaintances and relatives of said George F. Harding that he has been during more than ten years last past, and still is a resident of San Diego, California.

(Sgd.) GREGORY T. VAN METER.

Subscribed and sworn to before me, a Notary Public, by said Gregory T. Van Meter, this 22nd day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,
Notary Public.

(SEAL)

IN CENTER

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, *et al.*,
Defendants.

Albert B. Joyner, being first duly sworn, deposes and says that he has read the affidavit of William J. Ammen presented herewith; that affiant is now and has been for some years last past associated with said Ammen as a member of the law firm of Ammen, Humphrey & Joyner, in Chicago, Illinois; that from the fall of 1897 until the fall of 1903, he was associated with said Ammen, as a law clerk in and about the affairs of George F. Harding, Complainant in the above entitled cause, and from the fall of 1903, down to the present date, affiant as an attorney, has been associated with the said Ammen in and about the affairs of said Harding, and during said entire period of about twelve years, affiant has been intimately acquainted with said Harding and familiar with his legal affairs, and in or about the year 1897 was informed by said Harding that he, said Harding, was a resident of the City of San Diego and a citizen of the State of California and from said time down to the present time affiant has always understood from said Harding that he, said Harding, has during all said time and still is a resident of said City of San Diego and a citizen of said State of California, and during said time has heard said Harding state a great many times, from time to time, and from year to year, that his, said Harding's residence, was at the respective times of such statements, in said City of San Diego, and during said period affiant has inspected many instruments executed by said Harding wherein the residence of said Harding was stated to be San Diego, California, all of which was done, as affiant is informed by the direction of said

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Harding, and during said entire period from the fall of 1897 down to the present hour said Harding has never declared by act or deed to, or in the hearing, or presence of this affiant either in express words or in substance or effect, that his residence in or during said period was at any place other than in the said City of San Diego, California, and from his entire language and conduct during said entire period this affiant was led to believe, and did believe and still believes that said Harding in or about the year 1895, did actually and in good faith, and without any unlawful or improper motive whatsoever, become and remain and still is a resident and citizen of said City of San Diego, and a citizen of California, and this has been the belief of affiant during said entire period; and from such intimate relationship with said Harding, and from his said declarations and conduct above mentioned, this affiant is informed and believes and so states the fact to be that said George F. Harding did in fact become a citizen and resident of said City of San Diego in or about the year 1895 and has ever since remained and still is a citizen and resident of said City of San Diego.

Affiant further states that during said period said Harding has been in Illinois only occasionally and for short periods and then as affiant believes, only when his presence was required by litigation, or business, wherein he, said Harding, was interested as attorney, or a party in interest.

Further affiant saith not.

Dated this 22nd day of April, A. D. 1909.

(Sgd.) ALBERT B. JOYNER.

Subscribed and sworn to before me this 22nd day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, *et al.*,
Defendants.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

John L. Zweck, being first duly sworn, states on his oath that he was in the employ of George F. Harding, Sr., in Chicago, Illinois, prior to 1895; that after said George F. Harding left Chicago and became a resident of San Diego, California, in or about the year 1895, this affiant was employed by George F. Harding, Jr., and the Chicago Real Estate Loan & Trust Company and has been in the employ of said George F. Harding, Jr., and said Chicago Real Estate Loan & Trust Company ever since said George F. Harding ceased to be a resident of the State of Illinois, and became a resident of San Diego, California, in or about the year 1895; that during the past ten or twelve years he has seen George F. Harding very seldom at his son's office, the former office of said Harding, Sr., or elsewhere in Illinois; that he has known said Harding, Sr., to come to Chicago, and when he left; that said George F. Harding, Sr., has been very little in Chicago, during the past eight or ten years, and then only when compelled to be here on account of business, or litigation, or to visit; that he, affiant, has seen many papers, affidavits, deeds, etc., signed by said Harding, since 1895, all of which stated said George F. Harding's residence as San Diego, California, and affiant always understood and believed that George F. Harding was and still is a resident of California for the past twelve years, or more.

(Sgd.) JOHN L. ZWECK.

Subscribed and sworn to before me this 22nd day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,
Notary Public.

(SEAL)

COPY BOUND CLOSE IN

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, *et al.*, *Defendants.*

A. C. H. Snyder, being first duly sworn, states on his oath that he is a nephew of George F. Harding, complainant in the above entitled case, and the son of Mary Harding Snyder, the only sister of George F. Harding, and with whom his uncle, the said George F. Harding, resided in San Diego, California, in the year 1895, and thereafter, and affiant then understood from said Harding that that was the home and residence of said Harding and affiant further states that affiant was a resident of San Diego, California, at or about the time that said George F. Harding moved to San Diego, California, in or about the year 1895, and affiant knows that said George F. Harding both leased and purchased a house in San Diego, California, and always understood since 1895, or thereabouts, that said George F. Harding's residence was and still is San Diego, California, and this affiant has resided in Chicago, Illinois, since the year 1896, and affiant further states that since said George F. Harding acquired his residence in San Diego, California, in or about the year 1895, he, George F. Harding, has been in Chicago, for a small part of the time only, and then only when compelled to be there on account of litigation, or business, or visiting. Further affiant saith not.

(Sgd.) A. C. H. SNYDER.

Subscribed and sworn to before me, a Notary Public, this 21st day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey *et al.*
Defendants.

S. C. DeVeny, being first duly sworn, deposes and says that he is by profession a physician and surgeon and has followed such profession in Chicago, Illinois, for 29 years last past; that for 24 years last past he has resided at 2542 Indiana avenue in said city, affiant's said residence adjoining that of George F. Harding, Jr., at number 2536 Indiana avenue in said City and which said last mentioned residence was formerly the residence of George F. Harding, complainant in the above entitled cause and has, during said time last aforesaid been acquainted with said George F. Harding; that during the last ten or twelve years affiant has seldom seen George F. Harding, in said City, and that during said period, last aforesaid, affiant has always understood that said George F. Harding claimed and now claims to be a resident of the City of San Diego and State of California.

Further affiant saith not.

Dated this 22nd day of April, A. D. 1909.

(Sgd.) S. C. DEVENY, M. D.

Subscribed and sworn to before me this 22nd day of April, A. D. 1909.

(Signed) ABNER C. HARDING.
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company *et al.*
} No. 28,865.

Joseph H. Strong, being first duly sworn, states that he lives at 2528 Indiana Ave. in Chicago, Illinois, and has lived there for the last fifteen years or more; that on Sunday afternoon, April 18th, 1909, a man called at my residence asking to see me and gave his name as Mr. Isham or some such similar name. He asked me how long George F. Harding had lived at No. 2536 Indiana Ave. in said City of Chicago, and does he not live there now. I told him that Mr. Harding had not lived there of twelve years or more. He thought I must be mistaken; I told him that I was not mistaken, that I knew when Mr. Harding ceased to live at 2536 Indiana Ave. because I heard then and from him and the coachman he was going to California, and he gave up his horses and carriages. I hired his coachman, Daniel Haney, who had been with him for years, and who remained with me. Shortly after the man left, I telephoned to George F. Harding, Jr., at his residence, and stated what had occurred then, and what I have stated in this affidavit, as to dates and conditions, and which I believe to be true.

(Sgd.) JOSEPH H. STRONG.

Subscribed and sworn to before me, a Notary Public, this 22nd day of April, A. D. 1909.

(Sgd.) LILLIAN NEWHOUSE,
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey *et al.*
Defendants.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Ada E. White (nee Lucht), being first duly sworn, deposes and says that she was from about the second day of December, 1897, until July 23rd, 1908, employed by the Chicago Real Estate Loan & Trust Company, as bookkeeper and stenographer, in Chicago, Illinois; that during said time she prepared or transcribed many papers, deeds and other instruments to be executed by George F. Harding, Complainant in the above entitled cause, and that when the residence of said George F. Harding was stated in any said deeds or instruments or conveyance it was invariably stated as being San Diego, California; that said George F. Harding claimed during said period to be a citizen of California, and a resident of the said City of San Diego, in the said State of California, and that during said time George F. Harding was seldom in the City of Chicago, or State of Illinois, except when, as understood by affiant, pending litigation demanded his presence, and affiant in the course of her said employment addressed and mailed many letters and other communications to said George F. Harding, at San Diego, California.

(Sgd.) ADA E. WHITE.

Subscribed and sworn to before me this 22nd day of April, A. D. 1909.

(Sgd.) ALICE WILLNER,
Notary Public.

(SEAL)

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding, *Complainant,*

vs.

Standard Oil Company of New Jersey *et al.* *Defendants.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK.

Anna M. Burson (nee Johnston), being first duly sworn deposes and says, that she was during the time from September, 1904, until December 16th, 1908, employed by the Chicago Real Estate Loan & Trust Company, as stenographer; that during the course of said employment, she transcribed or prepared many deeds and other instruments to be signed by said George F. Harding and that when the residence of George F. Harding, complainant in the above entitled cause was stated in said deeds or instruments, it was invariably stated to be San Diego, California, that during said time affiant has written and addressed many letters and communications to said George F. Harding, at San Diego, California, and during said time has always understood said George F. Harding claimed to be and was and still is a citizen and resident of California, and a resident of the said City of San Diego.

Affiant further states that during said time said George F. Harding has been in Chicago, Illinois, very seldom.

Further affiant saith not.

(Sgd.) ANNA M. BURSON.

Subscribed and sworn to before me this 22nd day of April, A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,
Notary Public.

(SEAL)

SE IN CENTER

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company, *et al.* } No. 28,865.

Addie C. Harding being first duly sworn upon oath deposes and says that she is of lawful age; and the wife of Abner C. Harding oldest son of George F. Harding, complainant in this case.

I have known George F. Harding for more than thirty years.

In the last twelve years he has always stated that his residence was San Diego, California, his presence here during this period has been for brief periods, and at infrequent intervals and controlled by the necessities of his business.

It has been a matter of common knowledge that his residence and home was with his sister Mary in San Diego, California.

Years ago he gave up all but one of his clubs some five or six and has only been here since as stated visiting relations.

(Sgd.) ADDIE C. HARDING.

Subscribed and sworn to before me this 21st day of April, A. D. 1909.

(Sgd.) I. EMELIA JERUSALIMSKY,
Notary Public.

(SEAL)

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

In the United States Circuit Court.

In and for the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey *et al.*
Defendants.

State of Illinois, } ss.
County of Cook.

Ellen O. D. Harding, wife of George F. Harding, Jr., being first duly sworn states on her oath; that I have resided at the old homestead, No. 2536 Indiana Avenue, in Chicago, Illinois, for the past eight years or more, that during that time and years before I always understood that George F. Harding's residence was San Diego, California; that during her residence at No. 2536 Indiana Ave., the former residence of George F. Harding, he has been very seldom there and then only for very short periods at a time, and then only as a visitor, and this affiant has always understood that he only came to Chicago because compelled to on account of litigation or business, and he was always anxious to get through with it early as possible, so as to get away from Chicago.

(Sgd.) Ellen O. D. Harding.

Subscribed and sworn to before me, a Notary Public, by said Ellen O. D. Harding, this 22nd day of April, A. D. 1909.

(Sgd.) I. Emelia Jerusalimsky,
Notary Public.

(seal)

The Court further certifies that thereafter the following occurred:

"The Court: The answer may be considered as filed or offered; it has been filed I think.

Mr. Ammen: We have it, have it here of record.

The Court: Has it been filed?

Mr. Ammen: Yes.

The Court: Put it on the files. I will treat this as an order to show cause, to which respondents may at the time of the hearing file their papers. They should have been filed with the clerk.

Mr. Ammen: There was no rule to show cause.

The Court: That would have been proper practice, of course—to have filed it then and to have given Mr. Mayer a copy.

Mr. Mayer: What would your Honor suggest as to our rights to this answer?

The Court: Now, if you desire to combat anything in this answer you shall have the opportunity to do it.

Mr. Mayer: Yes, sir.

Mr. Mayer: Your Honor, as to our reply to their answer, we will prepare it just as soon as we can.

The Court: Yes, you cannot get it here much before the time to which this hearing will be adjourned.

Mr. Mayer: We cannot get it in before Tuesday (May 4th).

Mr. Ammen: We insist—we deny they have the right. We contend they have no right to make any reply. Our answer is in the nature of objections. That is what it is.

The Court (to Mr. Mayer): You say you will try and get it here by Tuesday (May 4th)?

Mr. Mayer: Yes."

"Replication" filed by defendant, May 4, 1909.

Thereupon the argument against said motion to amend said removal petition was made by George F. Harding and William J. Ammen for the complainant. At the conclusion of said argument the further hearing of said motion was continued to 9:30 A. M., May 4, 1909, at which hour and on which date the hearing of said motion was resumed, and thereupon by leave of court there was filed and read to the court on behalf of said Corn Products Manufacturing Company what is styled a "Replication of Corn Products Manufacturing Co. to the objections and answer of George F. Harding, complainant," which replication is as follows:

IN THE

Circuit Court of the United States

IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION THEREOF.

George F. Harding, *Complainant,* *vs.* Standard Oil Company of New Jersey et al., *Defendants.*	In Chancery. No. 28,865.

IN THE MATTER OF THE APPLICATION OF CORN PRODUCTS MANUFACTURING CO. TO AMEND ITS PETITION FOR REMOVAL.

REPLICATION OF CORN PRODUCTS MANUFACTURING CO. TO THE OBJECTIONS AND ANSWERS OF GEORGE F. HARDING, COMPLAINANT.

MAYER, MEYER & AUSTRIAN,
CALHOUN, LYFORD & SHEEAN,
Solicitors for Petitioner Corn Products Manufacturing Co.

LEVY MAYER,
WM. J. CALHOUN,
Of Counsel.

IN THE

CIRCUIT COURT OF THE UNITED STATES

IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION THEREOF.

George F. Harding, *Complainant,* *vs.* Standard Oil Company of New Jersey et al., *Defendants.*	In Chancery. No. 28,865.

IN THE MATTER OF THE APPLICATION OF CORN PRODUCTS MANUFACTURING CO. TO AMEND ITS PETITION FOR REMOVAL.

REPLICATION OF CORN PRODUCTS CO. TO THE OBJECTIONS AND ANSWER OF GEORGE F. HARDING, COMPLAINANT.

Now comes said Corn Products Manufacturing Co., and by way of replication to said objections and answer of said George F. Harding, or so much thereof as it is advised it is necessary or proper to make reply unto, replying says:

1. Said Harding does not deny, and therefore by not denying admits the allegations made in said motion to amend that he

> "said George F. Harding never registered as a voter and never voted in the State of California; that he never paid any taxes on real or personal property in San Diego; that his name never appeared either in the city or telephone directories therein; and that he has not been in said San Diego since 1902; that during all of the time that said George F. Harding was in California and since he had and now has most if not all of his property in the State of Illinois."

2. On or about February 3, 1896, his wife Adelaide M. Harding, filed her bill in the Circuit Court of Cook County, Illinois, against said George F. Harding for separate maintenance; that said proceeding was prosecuted upon the

grounds alleged in the bill and amended bill therein; that said George F. Harding had committed adultery with certain persons named in said proceeding, and had been guilty of abusive and cruel treatment, in consequence of which said Adelaide M. Harding left said George F. Harding's house, and lived separate and apart from him on or about February 1, 1890. On or about July 26, 1897, said Cook County Circuit Court rendered a decree in said separate maintenance proceeding in favor of said Adelaide M. Harding. Said George F. Harding appealed from said decree to the Supreme Court of Illinois, where the decree was affirmed on or about January 9, 1899. Pending said appeal and on or about August 31, 1897, or just about a month after said decree for separate maintenance was so rendered by said Cook County Circuit Court, the said George F. Harding filed a bill in the San Diego County California Superior Court against his said wife for divorce on the alleged ground of desertion. Said George F. Harding testified therein that he resided in San Diego since May, 1895; that he took a lease from his sister Mary R. Snyder, of 1845 First street, San Diego; that he rented the house of her under an agreement that she should live in it, if she could, and take care of the house for him.

To the question put to him on cross-examination, "What is the longest time you remained at San Diego at any one stretch from May, 1895, to August 31, 1897" (the date when he filed his divorce suit), he replied:

"Hard for me to tell. Say two or three months.

Q. What was the longest time you were here?

A. Off and on in other parts of California—went to San Francisco. Went with my sister to Santa Monica, passing along the coast for her health and mine.

Q. What is the longest period you were within the state between the dates I have mentioned?

A. Oh, I was in the state, I should think—

Q. Continuously, I mean.

A. Well, I was—you define continuously, now—I was in the state from time to time during these two years, you know, two years and a half, thereabouts.

Q. I will ask how long you stayed in the county continuously for any one time?

A. I have replied to it that I think two or three times I stayed in the state for periods say of 90 days or thereabouts.

Q. Two or three times you stayed within the state for 90 days?

A. Yes. I am sure of that.

Q. During the time from May 15, 1895, to August 31, 1897, Mr. Harding, I wish you would state to the court what business interests you had in San Diego.

A. I was not in business at all; I was trying to rest; I am now 70 and I thought it was about time I should retire.

Q. When did you leave here after August 31, 1897?

A. Within perhaps a month or two."

The said Harding then and there further testified that:

"his sister changed her place of living in San Diego for some reason, and in November, 1897, as I understood it, she went to Denver, Colorado. I think I am not wrong as to the time, but up to the time that she was here I lived with her."

And again:—

"I have always called myself a resident of San Diego since the 15th of May, 1895, and so registered and written my deeds in that way and never voted anywhere else.

Q. You have never voted here?

A. No, sir, never—never was here and voted here at all, but I refused to vote elsewhere and have never resided elsewhere.

Q. How great a proportion of the time, or how much of the time, since May 15, 1895, and up to August 31, 1897, did you spend in the residence at 2536 Indiana avenue, Chicago, at different times?

A. I cannot recall. I do not know. I was there occasionally. I do not know. I do not remember.

Q. You have had considerable business interests in Chicago during all this time?

A. Yes, sir, indeed; very heavy; this case, you know was pending and required a great deal of time;—briefs in the Supreme Court, briefs in the Appellate Court, struggles over various questions connected with it.

Q. How often have you been in Chicago since May 15, 1895?

A. Often been. Very frequently, more after 1897 than earlier because matters were becoming—continuously more dangerous for this estate and there has been more to do, more troubles. My business in Chicago being connected somewhat with getting loans elsewhere in Boston and New York.

Q. How long has it been since you were here the last

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time, previous to your present visit?

A. Perhaps three months. I do not recall precisely, at the lowest, three or four months. I really cannot tell you.

Q. What was it originally brought you to California, Mr. Harding?

A. Health and my only sister residing here 15 years.

Q. Had you ever visited your sister here before?

A. Yes, sir, I think once in 1894—once or twice.

Q. Ever before that?

A. Never.

Q. Have you ever made any attempt, Mr. Harding, to be registered as a voter here?

A. Never.

Q. Where are you residing now, here?

A. In what place in this town? I hold my residence still here and never made a residence anywhere else.

Q. I asked you where in fact you are living now?

A. Where I am stopping?

Q. Yes.

A. I am stopping at the Hotel Coronado.

Q. Have you been over there ever since you came, have you?

A. Yes, sir.

Q. This last time?

A. Yes, sir.

Q. Where have you stopped previously to this present visit, since your sister went away in the fall of 1897?

A. I have stopped at different hotels when I have been here since that time, the Brewster, and Coronado, whatever they were, I do not think I have stopped with any private parties since then, but always with my sister before.

Q. You never had any regular quarters since your sister went away?

A. No, I have not, the house was occupied, you know, and all that.

Q. Have you any business interests here now?

A. If I understand the words business interests—it is a peculiar term—I have not; in short, you better ask me if I had been in business here. I have not and I am not."

3. Though said Adelaide M. Harding's bill for separate maintenance was filed on or about February 3, 1890, in said

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Cook County Circuit Court, on account of the bitter contest and frequent appeals referred to in the motion to amend filed herein, a decree was not entered in said cause until on or about January 26, 1897, which decree allowed said Adelaide M. Harding $6,400 per year for separate maintenance and $8,000 for solicitor's fees. Nearly a year before said decree for separate maintenance was entered, and while the proceedings were being vigorously and bitterly resisted by said George F. Harding, he executed and delivered to the Chicago Real Estate Loan & Trust Company a deed which was recorded November 25, 1903, in Book 99, page 367, of the Recorder's office of Warren County, Illinois, of which deed the following is a copy:

This Indenture Witnesseth, That the Grantor, Geo. F. Harding, of the City of San Diego, in the County of San Diego, and State of California, for the consideration of Five Dollars ($5.00), convey and quitclaim to the Chicago Real Estate, Loan & Trust Co. of the City of Chicago, County of Cook, and State of Illinois, all interests in the following described Real Estate; to-wit;

Any and all lands of every kind and description claimed or owned by me in the State of Illinois, and all lots and lands of every description in the City of Chicago, in which I have any right, title, or interest whatsoever, situated in the State of Illinois; hereby releasing and waiving all rights and by virtue of the Homestead Exemption Laws of this State.

Dated this seventh day of September, A. D. 1896.

GEORGE F. HARDING (Seal).

State of Illinois, }
County of Cook. } ss.

I, George F. Harding, Jr., Notary Public in and for said County in State aforesaid, Do Certify that George F. Harding, being George F. Harding, Senior, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the Right of Homestead.

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Given under my hand and Notarial Seal this 7th day of September, A. D. 1896.

GEORGE F. HARDING, JR.,
(Notarial Seal) *Notary Public.*

Filed for record the 25th day of November, A. D. 1903, at 8:30 o'clock A. M.

S. O. TOURTELLATT,
Recorder.

(Book 99, page 367, Warren Co. Recorder's Office.)

Said George F. Harding for many years owned a great part of, if not the entire, capital stock of said Chicago Real Estate, Loan & Trust Company, and was its president until as late as about 1895. The name of said company was formerly that of the Peoria Starch Manufacturing Company, and during the time said George F. Harding was president thereof, its name was changed, on March 27, 1894, to that of Chicago Real Estate, Loan & Trust Company. The said Chicago Real Estate, Loan & Trust Company has been controlled and managed and is now controlled and managed by the sons of said George F. Harding, namely, George F. Harding, Jr., and Abner C. Harding, the said George F. Harding, Jr., having been for years, and now being, the president of said company, and said Abner C. Harding has been at different times the secretary thereof.

4. Said George F. Harding by his said contest of said separate maintenance proceedings, and his frequent appeals to the Appellate and Supreme Courts of Illinois referred to in said motion for leave to amend, resisted payment of the alimony and solicitor's fees so decreed against him, until on or about November 7, 1904, a motion was made in said Cook County Circuit Court proceedings to adjudge said George F. Harding guilty of contempt for not paying the sum of $33,788.04, the unpaid accumulated amount of separate maintenance and solicitor's fees awarded to his said wife in said Illinois State Court proceedings. On January 5, 1905, in said contempt proceedings said George F. Harding was adjudged guilty, and from said decree of guilt appealed to the Appellate Court for the First District of Illinois. To said contempt proceedings said George F. Harding interposed as a defense that he had secured said decree of divorce from his said wife in said Superior Court of San Diego, California, and that the same had been affirmed by the Supreme Court of California. The affirmance by said California Supreme Court took place

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on October 17, 1903 (see *Harding* v. *Harding*, 140 Cal., 690). The said decision of said Supreme Court of California was, however, reversed *in toto* on or about May 15, 1905, by the United States Supreme Court (*Harding* v. *Harding*, 198 U. S., 317).

5. In said George F. Harding's affidavit in support of his said answer and objections, he states:

> "That he was admitted as a citizen of California to practice law as an attorney in said State after a hearing and motion in the Supreme Court in San Francisco in 1901, or 1902, and a formal license and certificate were issued to him to that effect at the time; that it was in effect the decision of the Supreme Court of California of his citizenship in said State," etc.

On the trial of his said divorce case in San Diego, California, said George F. Harding on or about January 16, 1901, testified on cross-examination as follows:

> "I would like to add I have been retired from business for some years everywhere.
>
> Q. You have been retired from all branches of business for some time?
>
> A. All branches of business excepting caring for my own property.
>
> Q. You were not thinking of going into any new business enterprise now?
>
> A. No, indeed; I think I have got to the point where I have got to quit, and hand it over to young men, and I have been at that point for some years."

The statement for admission to the Bar that the applicant is a citizen or resident is an *ex parte* statement, no issue being made or had thereon. The records of the Supreme Court of California which were kept at San Francisco were destroyed in the earthquake and fire of 1906.

In said George F. Harding's affidavit, which is made an exhibit and a part of his said objection and answer, said Harding swears that he went to San Diego because his sister resided there—

> "she having urged him to come there at what then seemed to be, apparently, about the close of their mutual lives, both then being near the age of seventy years and suffering from the infirmities of age."

Said George F. Harding, in his affidavit filed in support of his said objection and answer, swears that said divorce case "is still pending and undetermined in California."

The facts are these: The United States Supreme Court, in *Harding* v. *Harding*, 198 U. S., 317, ordered, on May 15, 1905, that

> "The judgment of the Supreme Court of California must therefore be reversed, and the cause be remanded for further preceedings not inconsistent with this opinion."

The Supreme Court of California, accordingly, in *Harding* v. *Harding*, 148 Cal., 397, on January 2, 1906, upon presentation of said remittitur from the United States Supreme Court:

> "Ordered that the judgment and order (of the Superior Court of San Diego County) denying the motion for a new trail be, and the same are hereby, reversed, and the cause remanded to the Superior Court of San Diego County for further proceedings not inconsistent with the opinion of the United States Supreme Court and this opinion."

And the application for a rehearing and modification of the opinion of the Supreme Court of California was denied on or about February 1, 1906.

On or about February 2, 1906, the remittitur of the United States Supreme Court and of the Supreme Court of California was filed in said cause in said Superior Court of San Diego County. No further steps or proceedings, whatsoever, have been had in said cause, except the entry of the appearance therein, on or about February 19, 1906, of T. W. Hubbard, of San Francisco, California, as attorney for said Adelaide M. Harding.

6. In said George F. Harding's said objection and answer he swears, in paragraph 14 thereof, as follows:

> "During the period of more than ten years last past whenever in making deeds or other instruments of writing, or in registering at hotels, as he has had occasion to do for, perhaps, a thousand times, during said period he has always stated in such instruments and upon such hotel registers his residence as San Diego, in the State of California."

Said George F. Harding testified in his divorce proceeding in California that he had taken up his residence there on May 15, 1895.

The said Corn Products Manufacturing Company now has in its possession true and correct copies of a large number of deeds of conveyance and other instruments, under seal, in which said George F. Harding is described as being of the "City of Chicago, County of Cook and State of Illinois," or

"of the County of Cook and State of Illinois," which deeds are recorded in various counties of the State of Illinois, a very considerable number of which instruments are acknowledged before said George F. Harding, Jr., as a Notary Public in Cook County, Illinois, and another very considerable number of which instruments are acknowledged before Albert B. Joyner, a Notary Public in Cook County, Illinois, being the same Albert B. Joyner who appeared as the solicitor of record in this suit for said George F. Harding in the Superior Court of Cook County; that some of said instruments were executed in 1895 (after June 1, 1895), others in 1896, others in 1897, others in 1898, others in 1899, others in 1900, others in 1901, and others in 1902, during the very years that said George F. Harding claimed in said divorce proceedings to have been a resident of said State of California. Some of said instruments were executed by said George F. Harding in 1902 (after January 31, 1901, the date of said California divorce decree), and in the instruments last aforesaid said George F. Harding describes himself as being unmarried, the date of the execution of these deeds having been after his said alleged divorce decree.

A brief synopsis of a few of said instruments, picked out at random, is as follows:

(A) "A warranty deed, describing George F. Harding thus: 'the grantor, George F. Harding (unmarried) of the City of Chicago, in the County of Cook, and State of Illinois,' etc. The grantee therein is August Welander, and the property described therein is located in Peoria, Peoria County, Illinois. The deed is dated June 23, 1902. It was acknowledged before said Albert B. Joyner, as a Notary Public of Cook County, Illinois, on June 23, 1902, and is recorded in Book E-I, page 194 of the records of Peoria County, Illinois.

(b) Another of said deeds describes said George F. Harding thus: 'The grantor, George F. Harding (unmarried), of the City of Chicago, in the County of Cook, and the State of Illinois,' etc. The grantee therein is Emmet Illingsworth, and the property described therein is located in the City of Peoria, Peoria County, Illinois. The deed is dated June 23, 1902. It was acknowledged before said Albert B. Joyner, as a Notary Public of Cook County, Illinois, on June 23, 1902, and recorded in Book N. I., page 49, in the Recorder's Office of said Peoria County, Illinois.

(c) Another of said instruments is a quit-claim or release in which said George F. Harding is described as 'George F. Harding, of the City of Chicago, of the County of Cook and State of Illinois,' etc. The quit-claim and release runs to Almon F. Dodge and Elizabeth Dodge, his wife, of Winnebago County, Illinois, and conveys property located in said Winnebago County; is dated March 13, 1900, is acknowledged before Edgar Madden, a Notary Public of Cook County, Illinois, on March 14, 1900, and was recorded on March 15, 1900, in Book 138, page 149, in the Recorder's Office of said Winnebago County.

(d) Another of said instruments is a quit-claim deed in which said George F. Harding describes himself thus: 'George F. Harding, executor of the estate of A. C. Harding (deceased), of Chicago, in the County of Cook, and State of Illinois,' etc. The conveyance is to the Board of Education, School District Ten (10) of Monmouth, County of Warren, Illinois. It is dated January 28, 1899, was acknowledged before said Albert B. Joyner, a Notary Public of Cook County, Illinois, on January 28, 1899, and recorded in Book 92, page 345, in the Recorder's Office of said Warren County.

(e) Another of said instruments is a quit-claim or release of mortgage in which the grantor is described as: 'George F. Harding, of the City of Chicago, of the County of Cook, and State of Illinois,' etc. The release runs to Edward Seitz, of Peoria, Illinois. It was acknowledged before said Albert B. Joyner, a Notary Public of Cook County, Illinois, on July 29, 1898, and was recorded in Book Q-H, page 371 in the Recorder's Office of said Peoria County.

(f) In another of said instruments the grantor is thus described: 'George F. Harding, of the County of Cook and State of Illinois,' etc. It is a quit-claim and release running to Joseph B. Johnson, of Peoria County, Illinois. It is dated January, 3, 1898, was acknowledged before said Albert B. Joyner, a Notary Public of Cook County, Illinois, on January 3, 1898, and was recorded in Book M. H., page 592, in the Recorder's Office of Cook County, Illinois.

(g) Another of said instruments is a quit-claim and release made by the Firemen's Insurance Company unto 'George F. Harding, of the County of Cook and State of

Illinois,' of which company said George F. Harding was at one time president. Said release is executed in the name of said Firemen's Insurance Company 'by A. C. Harding, President,' said A. C. Harding being the son of said George F. Harding. Said instrument is dated February 24, 1896, was acknowledged before said Albert B. Joyner, a Notary Public of said Cook County, Illinois, and was recorded on February 25, 1899, in Book 136, page 589, in the Recorder's Office of Winnebago County, Illinois, and quit-claims and releases real estate located in said county.

(h) Another of said instruments is a similar quit-claim and release from said Firemen's Insurance Company unto said 'George F. Harding, of the County of Cook and State of Illinois.' Said release is executed in the name of said Firemen's Insurance Company, by Abner C. Harding, as President; it is dated March 1, 1896, was acknowledged before said Albert B. Joyner, a Notary Public of said Cook County, Illinois, and was recorded on March 6, 1900, in Book H., page 44, in the Recorder's Office of Bureau County, and quit-claims and releases real estate located in said Bureau County, Illinois."

7. On or about May 24 1901, said George F. Harding made and delivered to the municipal authorities of said City of Chicago, and particularly to the Committee of the City Council of said City on Local Transportation, the following proposition:

CHICAGO, May 24, 1901.

To the Committee upon Local Transportation:

I respectfully call your attention to the fact that the proposition heretofore made by me and submitted to the Mayor and Common Council, of which a copy is hereto attached, is again made and renewed by me and to that end is now herewith submitted to your committee for consideration and acceptance.

With all due respect, I beg to advise you that I am able and willing to perform and comply with this proposition should a contract be awarded me, according to its terms; and you are especially advised that I will consent to any modification of the same found by you, necessary or proper, to effect the end, or for the purposes, therein stated.

I should greatly prefer that some person or persons other than myself should be given the contract upon the same terms,

and will gladly yield to some higher or better bidder for this valuable property; but I make this offer as the only way open to save the City from further injustice, and the present tenants should be required, at least, to meet these terms.

I will further pay the costs of whatever litigation shall be required to enforce the City's rights as against the said corporations, now in possession of its streets, and to enable the city to have judicially determined its rights to own and lease said surface lines of railway.

Out-going tenants who now deny the title and rights of their landlord, corporations who have made, during the forty years of the donations of the streets to them, many millions and distributed many fortunes to their stockholders, and who have all the time refused to submit to the reasonable requirements of the Common council and have evaded the payment of taxes, amounting, it is believed, to a million dollars a year—such faithless tenants ought not to be entitled to a further preference, and can not complain if the City shall now resume possession of its streets, or shall let or dispose of its property or rights as in other cases to the highest bidder.

I shall insist before you and before the courts, if need be, that the Common Council can not give away this property of the City, to-wit, its rights to buy these railways and let them again, if the Common Council see fit, on better terms than those which they are now held by the present occupants of the same; and that this property, considered as a franchise *in our streets,* is worth many millions of dollars to this City.

Hence it is clear that you ought not, and in obedience to your oaths of office can not, deal otherwise with said property; and you should not negotiate with said occupants or grant to them any interest in or power over said railways, upon the basis of their right to the same: except as such out-going tenants, who entered and must hold under the ordinance of August 16, 1858 (see Chicago laws and ordinances, 1866, pp. 393-8), and for greater certainty I attach a copy of said ordinance. The position of the City should be that said tenants have no other rights than under said ordinance, and can gain nothing by dealing with the Legislature for rights adverse to their landlord, and whatever grants they obtained, they claim or set up, must enure to the benefit of this City.

That to treat said occupants as owners of said property, is a surrender of the rights of the City and hence any gift or grant upon that basis, is as far out of your power, as honest men, as if you and at your instance, the Common Council

should pass an ordinance to grant to your friends or other third parties, the Court House or the contents of the City Treasury.

I venture to respectfully submit that an investigation by the city will prove, as you are no doubt aware, that this is most valuable City property, and the present occupants, who have been enriched by the original grant of twenty-five years, and then by the extension of twenty years, to the amount of some hundreds of millions of dollars beyond their contract with the City, can not complain that said contract, after such extraordinary liberality upon the part of this poor City, shall now be enforced to meet its pressing necessities and to relieve the poverty (due in part to these improvident grants), which has most unjustly inflicted upon many of its long suffering people, great sacrifices, disease and death.

The City should insist upon its right to municipal ownership of these railways and my proposition is to clear away doubts and technicalities, so as to enable the City to enter into its own property as such owner, whenever it shall be ready or willing so to do.

I further call your attention to the fact that it is necessary for the Common Council to elect to buy said lines and pay for them and that under the terms of the grant in said ordinance, until the City shall buy and pay for said railways, the said corporations have the right to operate said railways and remain in possession of your streets; and it is therefore not a question of whether you will adopt municipal ownership, but you are compelled to do so by your original contract with the corporations, unless you indeed intend to give them a perpetual grant of your streets.

Very truly yours,

GEORGE F. HARDING.

PROPOSITION OF GEORGE F. HARDING.

To the Mayor and Common Council of Chicago:

I will give the City of Chicago one million dollars for the lines of street railways in said City, to which the City is entitled under its contract or grant created by the ordinance of 1858; the money to be applied to the payment for said lines upon the appraisement required by said ordinance.

I will provide in any event for the payment of the value of said lines and the indebtedness of the City therefor when ascertained.

I will surrender the lines aforesaid to said City at any time upon the repayment to me of the sums which I shall have expended upon said purchase, with interest, together with said necessary outgoes, costs and expenses as I shall have incurred, less what I shall have received and retained from the use and occupation of said lines, simply stipulating to be made good in said investment before said lines shall be retaken by said City; and books shall be kept by me with full and careful accounts, to be open at all times for inspection and investigation by the City.

I will look for repayment not to the City, but to said lines, thus providing the needed moneys to carry out said grant as created by said ordinance and put an end to the term of the present occupants of the street railways without creating a city debt.

I will lease from the City said lines, giving the City the right at any time to become the owner upon simply repaying the sums, necessarily expended by me, in paying for and in operating said lines after giving credit for all sums received by me from the same—treating me as a trustee for the City.

I will pay to the City 20 per cent of the net earnings yearly from the lines, the same to be applied upon repayment of the outgoes, required for the purchase of said lines from present occupants.

I will reduce the fares upon said lines, including univeral transfers thereon, to 3 cents per fare, and so much less as shall seem reasonable from time to time.

I will run cars over the lines better than now run by present lessees or occupants and on 10 per cent. shorter time, and gen-

erally obey the orders of the city authorities in the management and control of the lines, and to the better accommodation of the people, and surrender the lines to the City at any time when repaid only necessary and proper advances and expenditures thereon.

I will make any reasonable modification of this proposition to the end of advancing the City's interests.

I will futher pay the costs of whatever litigation shall be required to enforce the City's rights as against the said corporations.

Employes upon the lines shall be entitled to wages such as are paid to the like class or classes of workmen elsewhere in the employment of the City; and they shall hold their positions under like civil service regulations and all differences with them shall be adjusted whenever possible by arbitration, with a view to prevent injustice and consequent strikes.

If the Common Council see fit to further grant upon proper terms to me, as the successful bidder or lessee of the said lines from the City, the right to parallel by duplicate rail or rails, feeding, or tributary or other lines now operated under franchises heretofore granted or not included in said lease, I will lay said rails and operate said lines on the same terms as provided in this proposition, for the lines which shall be let to me.

This grant should be made with a view of ensuring to the new lessee, equal facilities over said lines and to passengers the right to a continuous ride over all the lines upon a single fare with universal transfers.

I will secure this proposition and its performance by paying to the City one hundred thousand dollars and such other and further sums as may be necessary to remove or defeat real or captious objections.

You will kindly note, as the spirit, intention and letter of this proposition, that the chief objection heretofore urged to the exercise of the City's rights to purchase from appraisal, viz., that the City is impotent and can not increase its debt, is meant to be hereby removed; and the City at any time can enter into possession of its streets upon simply paying what it has cost to secure them from the present beneficiaries of their bounty, who have been many times over repaid their investment and have thereby grown enormously wealthy and have been in receipt of money exacted *from our people* which, if in the City's treasury would have removed a burden off the back

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of every man in the City and enabled the City to hold its place as the foremost City in the world.

Respectfully submitted,

GEORGE F. HARDING.

All of which is respectfully submitted.

CORN PRODUCTS MANUFACTURING CO.

By.....
Its Agent in this behalf.

MAYER, MEYER & AUSTRIAN,
CALHOUN, LYFORD & SHEEAN,
Solicitors for Said Corn Products Manufacturing Co.

LEVY MAYER,
WM. J. CALHOUN,
Of Counsel.

State of Illinois, }
County of Cook. } ss.

HARLEN H. PARMENTER, being first duly sworn, upon oath deposes and says that he is the agent in this behalf of said Corn Products Manufacturing Company; and has full authority to make this affidavit on its behalf; that all of the executive officials of said company are now out of this state; that he has read the above and foregoing reply of said Corn Products Manufacturing Company, and knows the contents thereof, and that said reply is true in substance and in fact.

.....

Subscribed and sworn to before me, a Notary Public, this Fourth day of May, A. D. 1909.

.....
Notary Public, Cook County, Illinois.

Said complainant objected to the filing of said reply and to the receipt of the same in evidence, but said objection was overruled and the court stated in response to said objection that the court would assume that what was contained in said replication was denied by the complainant. Thereupon an argument was made by Levy Mayer and W. J. Calhoun in reply to the said argument of said solicitors for said complainant.

The foregoing was all the evidence offered or admitted or heard or considered by the court upon the hearing of said motion to amend said removal petition.

Motion for leave to amend removal petition, taken under advisement May 4, 1909.

Thereupon, on May 4, 1909, the court took said motion under advisement, and afterwards on May 15, 1909, the court filed with the clerk of said court its opinion, upon said motion, which opinion is as follows:

OPINION ALLOWING MOTION TO AMEND REMOVAL PETITION.

CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
Eastern Division.

George F. Harding, *Complainant,* *vs.* Standard Oil Co., Corn Products Co., Corn Products Refining Co., Corn Products Mfg. Co., C. H. Matthiessen *et al.*, *Defendants.*	No. 28,865.

SANBORN, J.

Opinion of May 25, 1909, allowing amendment.

Motion for leave to amend original removal petition of Corn Products Co. The suit was commenced Oct. 23, 1907, in the Superior Court of Cook County, Illinois, and an amended bill was filed Oct. 25, 1907. On Nov. 5, 1907, Corn Products Co. filed its petition for removal on the ground of separable controversy. On the same day all the other defendants, corporate and individual, filed papers in the state court consenting to and petitioning for the removal. The removal petition, following the original and amended bills, alleged that complainant was a citizen of California, the four corporation defendants citizens of New Jersey, and making no allegation respecting the citizenship of the individual defendants; but stating that five of such defendants were not at the filing of the bill and petition either directors or officers of either of the corporate defendants. The petition stated that said suit presented a separable controversy between complainant and petitioner, and that the matter in dispute "exceeds, exclusive of interest and costs, the sum or value of two thousand dollars." The nature of the separable controversy is not stated, and the individual defendants are assumed to be only nominal

defendants. It seems to have been also assumed that the nature of the separable controversy sufficiently appears from the amended bill.

On the same day, November 5, 1907, notice was given to complainant's solicitor that the petition would be presented to Judge Ball of the Superior Court. On Nov. 6, 1907, this court made an order directing the filing in this court of a transcript of the record of the state court and restraining the further prosecution of the suit by the complainant in the state court; and on the same day the removing defendant filed in this court, in support of and supplemental to the petition for removal, a verified statement alleging the citizenship of the individual defendants, showing that four of the defendants were, at the commencement of the suit, and still are, citizens of Illinois, and that the other individual defendants were citizens of states other than California and Illinois.

Before the proceedings above mentioned a similar suit had been filed in the state court by the Chicago Real Estate Loan & Trust Company against Corn Products Company and others, for the same relief as prayed in the Harding bill. That suit was removed to this court and an injunction issued restraining complainant from further prosecuting the case in the state court. It was claimed by defendants that the bringing of the second suit was a violation of said injunction, and on contempt proceedings brought against Harding and others this court, by order of Dec. 13, 1907, decided that they were in contempt, but they were discharged, but restrained from the further prosecution of the Harding suit. This injunction was issued on the theory that the Harding suit was really the same as the Loan and Trust Company's suit.

After the removal of the Harding suit, and in the fall of 1907, Harding desired to make a motion to remand that suit; and on Dec. 23, 1907, filed a motion to remand on eight grounds, being no separable controversy, no removable cause shown, no diverse citizenship, no statement of the particulars of the alleged separable controversy, that the Standard Oil Co. did not unite in the petition (this is a mistake), and that the removal order is unlawful. The fifth clause of the motion to remand is as follows:

> "Because the complainant in said cause was, at the time of the commencement of said suit and at the time of the presenting of said petition for removal therein to said Superior Court, and of the filing of the same therein, a citizen of the State of California, and a citizen of no other

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state, and at the times aforesaid was not a resident of the aforesaid district; and Charles L. Glass, Joy Morton, William J. Calhoun and H. G. Herget, defendants in said cause were, respectively, at the times aforesaid, citizens and residents of the State of Illinois, and the other defendants, respectively, were not, at the times aforesaid, citizens of said State of Illinois, or residents of said district, but were, at said times, citizens of states other than said State of Illinois, and not residents, respectively, of said district."

It is claimed by complainant that this motion to remand is based upon *ex parte Wisner*, 203 U. S., 449, 27 Sup. Ct., 150, 51 L. Ed., 264. This is not clear, and the motion is quite different from the one filed in the *Wisner* case. This is not important except that the motion does not distinctly apprize defendants that the *Wisner* case was relied on.

The Circuit Court regarded the motion to remand as unimportant because of the pendency of the prior case of the Loan and Trust Company and would not permit it to be brought on because of the injunction in the first case. Meanwhile, however, the Loan and Trust Company moved for leave to dismiss the first suit. Leave was denied; but on appeal from the injunction order it was held by the Circuit Court of Appeals that it should have been granted. (*Harding* v. *Corn Products Co.*, Jan. 19, 1909.) The injunction order was reversed, and the bill ordered dismissed.

With the bill in the first suit dismissed the Harding case became the only one pending, and the importance of the removal and the motion to remand, having been before that of little importance, at once became matters of great importance and concern to the respective parties. In this situation, and on April 16, 1909, Corn Products Company applied to this court for leave to amend its original petition for removal so as to allege that Harding was when the suit was commenced, and ever since had been, a citizen of Illinois. It was alleged in the petition for leave to amend that petitioner, in making its original removal petition, relied on and believed the statement of the bill that Harding was a citizen of California, and it did not discover the falsity of such statement until April 12, 1909. Complainant answered the petition, appearing specially and for the purpose only of objection to the jurisdiction of the court, as stated in his petition to remand filed December 23, 1907; and insisting that the court has no jurisdiction, no power or authority to allow or enter-

tain the motion to amend. Other objections are stated, and it is submitted that complainant is and long has been a citizen of California. It is also insisted that if the court has power to allow the amendment it should not do so because complainant constantly insisted on the hearing of his motion to remand, but the court refused to hear him by reason of the injunction; and that if the motion could have been heard it must have resulted in the case being remanded; and, the injunction having been erroneous, complainant should not be thus prejudiced by a situation which prevented him from obtaining a hearing. But the injunction only became erroneous by reason of the refusal of this court to dismiss the first case, on motions made before the injunction order of December 13, 1907, was entered. Complainant at once appealed from that order, and nothing could be done, as a matter of course, while the appeal was pending, in respect to the motion to remand. It seems, therefore, that the motion for leave to amend should be granted, if the power of amendment exists. Defendant relies on *Wilbur* v. *Red Jacket, etc., Co.*, 153 Fed., 662, a case very much like this, for its procedure in bringing its petition for leave to amend.

In regard to the question of power, it is insisted that no jurisdiction is shown by the original petition for removal, because the suit is not brought in the district of the residence of either the plaintiff or defendant; and since Harding has not consented to sue here, and has waived nothing, the case is not now removable under *ex parte* Wisner and *In re* Moore, 209 U. S., 490. On the other hand it is urged that as the original petition showed diverse citizenship, the general jurisdiction was complete, and the question is one of venue only, of the power of this particular court to proceed. The lower federal courts are hopelessly divided on this precise question, but the practice under the Act of 1789 seems to have been clear.

The Judiciary Act of 1789 contained the provision that no civil suit should be brought against an inhabitant of the United States in any other district than that whereof he was an inhabitant, or in which he should be found at the time of serving the writ. Under this act the question arose whether, in cases of diverse citizenship, or of an alien against a citizen, it was necessary to allege that the defendant was an inhabitant of or found within the district in which suit was brought. In *Gracie* v. *Palmer*, 8 Wheat, 698, 5 L. Ed., 719, suit was brought in the District of Pennsylvania by aliens

against citizens of New York, and it did not appear that they were inhabitants of nor found in Pennsylvania. On error to the Supreme Court a motion to dismiss was made by Mr. Webster for want of jurisdiction. In overruling the motion Chief Justice Marshall stated that the uniform construction under the clause of the act referred to had been that it was not necessary to aver on the record that the defendant was an inhabitant of or found within the district; and that it was sufficient if the court appeared to have jurisdiction by the citizenship or alienage of the parties. And in *Cooley* v. *McArthur,* 35 Fed., 372, the precise point here presented was decided by Judge Brown, on a motion to remand, in favor of the jurisdiction. To the same effect are *Express Co.* v. *Todd,* 56 Fed., 104; 5 C. C. A., 432; and *Scott* v. *Hoover,* 99 Fed., 249.

Before the decision of *Ex Parte* Wisner in 1906, the decisions of the Circuit Courts of Appeal, and of the Circuit Courts, while by no means uniform, were generally in support of the right of removal, even against the plaintiff's objection. The argument in favor of the removal is stated by Judge Newman in *Rome Petroleum & Iron Co.* v. *Hughes Specialty Well Drilling Co.,* 130 Fed., 585. The argument is that the place of bringing suit or maintaining it is one of venue, not of jurisdiction, and that the language of section one of the removal act, that no civil suit shall be brought *by any original process or proceeding* in any other district than that whereof defendant is an inhabitant, was intended to exclude removal cases, they not being brought by original process in the federal courts; that section two, providing for removal only of cases of which the federal courts are given jurisdiction by section one, refers only to the first part of section one, by which the jurisdiction is conferred, and not to the clause relating to the district in which suit may be brought. Judge Newman therefore denied a motion to remand a case brought in Georgia by a citizen of South Dakota against a citizen of South Carolina. Judge Newman cites, in support of the ruling that the section refers to the first part of section one alone, the language of the Chief Justice, in *Davidson* v. *Railroad Co.,* 157 U. S., 201, 39 L. Ed., 672, 15 S. Ct., 563; while the Chief Justice himself, in the Wisner case, cites the same case as holding the very opposite. This illustrates the very unsatisfactory situation in which this court finds itself in attempting to decide whether this particular case was removed by the presentation of the removal papers to the State Court, and the docketing and injunction order of this court thereon.

Since the decision of the Wisner and Moore cases there can be no question of the duty to remand on application of a plaintiff who has waived nothing, in the usual case, in the absence of any application to amend. But the narrow and unusual question here presented is whether a federal Circuit Court can possibly have any jurisdiction whatever of such a case as this until the plaintiff consents. If it can, then amendment may be permitted to show that jurisdiction actually exists unaided by consent or waiver; but if not, then a remand is inevitable. *Powers* v. *Chesapeake, etc. Co.*, 169 U. S., 92, 42 L. Ed., 673, 18 Sup. Ct., 264; *Crehore* v. *Ohio, etc. Co.*, 131 U. S., 240, 33 L. Ed., 144, 9 Sup. Ct., 692; *Kinney* v. *Columbia, etc., Assn.*, 191 U. S., 78; 48 L. Ed., 103; 24 Sup. Ct., 30. Suppose a citizen of Maine sues a citizen of Vermont in the District of New Hampshire, and gets valid service of process. Defendant, relying on the Wisner and Moore cases, makes default, and plaintiff takes judgment. Is the judgment valid or absolutely void? Again, suppose in this case Harding makes no general appearance in the federal court, but continues to prosecute the case in the state court, can he be punished for contempt of the docketing and injunction order? In view of the confusion surrounding this question arising from the decisions under the Act of 1887-1888, it is refreshing to refer to the plain, satisfactory and uniform construction of the similar clause of the original Act of 1789, as stated by Chief Justice Marshall in *Gracie* v. *Palmer, supra.* And in view of such construction, and that a decision in favor of the jurisdiction may be readily reviewed, while a decision against it cannot, the power to amend the petition should be affirmed, and the petition to amend granted, if the individual defendants were merely formal parties defendant. That they were such seems clear to me from the cases of *Geer* v. *Mathiesen Alkali Works*, 190 U. S., 428, 47 L. Ed., 1122, 23 Sup. Ct., 807, and *Lamm* v. *Parrott Co.*, 111 Fed., 241.

A further question is raised as to the sufficiency of the statement in the removal petition of a separable controversy. It is usual in such petitions, and generally considered necessary, to allege the nature of the controversy; but if it appears from the record that such a controversy actually existed it is enough. This court, by its docketing and restraining order of Nov. 6, 1907, took jurisdiction of the case, thus sustaining its jurisdiction. This it had the power to do. That order was made more than two terms since, and cannot

now be reviewed in this proceeding, or any other in this court. This was decided in the *Des Moines Nav. Co.* v. *Iowa Homestead Co.*, 123 U. S., 552, 31 L. Ed., 202, 8 Sup. Ct., 217, approved by the Supreme Court in *Chesapeake & O. R. Co.* v. *McCabe,* by decision filed April 6, 1909.

I think, therefore, that the petition to amend should be granted. If it were disallowed, and the case remanded, there could be no review. *Ex Parte Pennsylvania Co.*, 137 U. S. 451, 34 L. Ed., 783, 11 Sup. Ct., 141; *Missouri Pac. R. Co.* v. *Fitzgerald,* 160 U. S., 556, 40 L. Ed., 536, 16 Sup. Ct., 389. Even where the state court proceeds to judgment against defendant the question of removal cannot be reviewed. *Whitcomb.*v. *Smithson,* 175 U. S., 635; 44 L. Ed., 303; 20 Sup. Ct., 248. On the other hand complainant has two remedies, mandamus in the Supreme Court to compel remand, or if a decree goes against him he may have the question reviewed on appeal. *Ex Parte* Wisner, *supra.* Leave to file the amended petition is granted.

May 15, 1909.

* * * * * *

And thereupon, after the filing of said opinion, and on May 15th, 1909, and in accordance with the directions in said opinion of this court, the clerk of the court entered upon his minute book a minute as follows:

"28,865 Chy. Harding vs. Standard Oil Co. Opinion Lv. to deft. Corn Products Co. to amend petn. for removal, etc. (draft.)"

Motions of May 22, 1909, to set aside order allowing amendment and to strike the "replication" from the files.

The court further certifies that on May 22nd, 1909, there came on further for hearing before said court a motion of said complainant appearing specially, which motion sought to set aside the leave heretofore given by this court to amend said removal petition, and also sought to strike from the files the so-called replication filed by the defendant, the Corn Products Manufacturing Company, to the complainant's said objections and answer; that the court heard arguments by George F. Harding and William J. Ammen in support of said motion, and argument by Levy Mayer in opposition thereto, and thereupon said motion was taken under advisement.

The court further certifies that said cause came on again to be heard before the court on June 12th, 1909, and further argument was then and there made by George F. Harding and William J. Ammen, on behalf of the complainant, in support of the motion last aforesaid:

Thereupon the court overruled the motion last aforesaid, which was the motion taken under advisement by the court on May 22nd, 1909, and which motion sought to set aside said leave heretofore given to amend said removal petition, and also sought to strike from the files the said so-called replication.

Order of June 11, 1909, denying said motions of May 22.

It is further certified that after the motion to strike out the so-called replication was heard, and while the same was under advisement, complainant served upon defendants' solicitors, and submitted to the court in support of said motion to strike out an affidavit of Abner C. Harding, but the same was not filed by the clerk nor read or considered by the court. Such affidavit is as follows:

Affidavit in support of said motions of May 22 not admitted.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT.

IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS.

Eastern Division.

George F. Harding,
Complainant,

vs.

Standard Oil Company of New Jersey *et al.*,
Defendants.

In Chancery.
No. 28865.

ABNER C. HARDING being duly sworn says:

That the so-called replication and its allegations are untrue in substance and in detail.

That said replication was never seen by or shown to complainant until after the hearing; and some days after the conclusions of the arguments of and for complainant and were so concealed and shielded from exposure and answer by complainant and his counsel.

It was not filed by leave of court known to complainant and if filed at all was improperly filed as a pleading as being such pretended replication; with which name it is falsely endorsed; and said replication has therefore obtained its place on the

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files by this false pretense and mis-statement and said complainant has therefore made and filed this motion to strike from the files, in aid of which motion this affidavit is made by affiant who is agent for complainant in this behalf.

Affiant further states that said replication is untrue, and inaccurate, in substance as in form.

That the allegations touching complainant, as having never been named upon a telephone directory in San Diego, and other like immaterial and accompanying denials of what complainant has never done, as stated in petition and copied in this replication, all and singular of them, are denied by the affidavit of said complainant, which affidavit was expressly made a part of the "objections and answer" and was filed therewith.

See same in the printed statement of same printed at large on page 105 answer, and 116 affidavit.

Affiant further states, viz., that point 2 of said replication contains a series of mis-statements intended to mislead and deceive the court; and affiant shows amongst others, that it is not true that such bill as therein described was ever filed in 1896.

That no such charges were made therein when said bill was filed, nor were they ever found true by any court or held to be supported by the evidence, that said litigation chiefly related and for years exclusively related, to the amount of the alimony, and the decision of the Circuit Court, as to the same, was reversed as to the said amount by the Supreme Court in 1899, after complainant had removed to California and for years had resided in and was a citizen of California, as affiant has before stated in his affidavit filed herein; and that such suit for divorce in California had been brought more than two years before said final Illinois decree.

Affiant further states that said Parmenter was not present at the hearing of said California case, and personally can have no knowledge of the testimony of the said Harding, stated in said replication, and of the details of direct and cross-examination of complainant; which in said replication is, so far as concerns said Parmenter, a pure fiction, or some shorthand report of the same; and about the accuracy of which said Parmenter has no personal knowledge whatever.

Point three, of said pretended replication also contains inaccurate and untruthful statements, about which said Parmenter, affiant thereto, had or has no personal knowledge, as would also appear from the said replication. The said Point

3, carefully conceals the fact that said Circuit Court's decree of $6,400 a year alimony was cut down to $3,600 a year by Illinois Supreme Court pending said suit for divorce in California. Point 3 declares also that Harding made and recorded in Warren County, Illinois, the deed of the Real Estate Company of extensive property, all his realty in Illinois, therein rightfully or properly describing himself as being of the City of San Diego in the County of San Diego, in the State of California, on September 7, 1896; and said replication, by said Warren County record was meant to conceal the fact that said deed was not alone recorded in Warren County in 1903, but had been long before recorded in Cook County at the very time it was made, viz., on or about the 7th day of September, 1896.

Affiant says that said date and place of said record was meant in order to deceive the court and mislead him by the said Parmenter and his associate Mayer for obvious purposes, so often shown by the said replication throughout.

Affiant further states that his statements touching the Chicago Real Estate Loan & Trust Company, so contained in said Point three of said replication and elsewhere, are totally unknown to said Parmenter personally, and are imperfect and particularly, touching complainant, are untrue; and meant to deceive and mislead.

Point Four; Affiant further says that the statement of said replication made in point 4 and elsewhere, touching alimony, are not only untrue in the particulars above stated, but in all other particulars where any shadow of truth is stated, are in truth changed and mis-stated, for the obvious purpose of deceiving and misleading the court.

That the truth is exactly contrary to the statements of said Mayer and Parmenter.

The whole controversy, in said entire litigation, related to the amount of alimony and attorneys' fees, and was due to the unfounded claim of the claimant and her attorneys, including Miller and Starr, for their exorbitant fees and her alimony; and this very truth complainant made to appear of record by his stipulation of January 3, 1893; in which stipulation he waived and gave the court power to waive, every one of the questions or contentions on his part, as therein stated, including custody of children.

Further affiant states that said claimant demanded as alimony more than $15,000.00 a year; which sum was more than the entire net income of said complainant at that time; that

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complainant offered his wife and she refused from the very beginning, twice the amount of alimony granted by the Supreme Court of Illinois, by its final decree in 1899 reversing that of the lower court; and the long litigation was, ever since 1890, fermented by other parties for other unworthy motives and interests.

That it is utterly false that complainant prevented the collection of said alimony or of the fees, after the amount was declared by the court, for a single hour; that said decrees for alimony and for costs and for fees were always secured by liens on complainant's property during every hour of this period; and their collection from complainant's real estate (said real estate being of a value of more than ten times the amount of said decree) was always within the power of claimants; and said claimants had liens established by recorded decrees upon said real estate ever since they were entered, and were by them also extended to the other realty of said complainant in other counties, with the obvious intention to put said liens, already ten times secured and easily capable of collection by sale of said real estate, upon execution, so as to force the ruin of complainant by such unnecessary and additional liens.

That the Circuit Court of Cook County finally so determined said matter of alimony and fees, and held that the same should be collected from sale of such real estate, which real estate had been long before seized and levied on and even advertised for sale, and then deliberately left unsold; and this was the final action, up to this hour of the said court, in said litigation; and afterward all of said alimony and fees and costs of every description were paid out of sales of said real estate, and they might have been paid for many years before had said wife and attorneys not refused to bring said real estate to sale.

That the truth is, that said wife of said complainant was only delayed, as to her alimony, because she chose to be so delayed; and that during all the period of said twenty years litigation she had a liberal fortune which complainant had given her before her suit of February, 1890.

Affiant further states that one of the defendants in this case is the Standard Oil Company of New Jersey, who consents to but does not unite in this motion for amendment: that John S. Miller of said Miller and Starr is the attorney of said company; and he was said attorney in the famous case for rebates, before Judge Landis; and was such attorney later

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in its behalf in the Court of Appeals when this petition was filed in this court on November 6th, 1907; that said Miller was the attorney and adviser of Mrs. Harding in her said entire litigation here and in California ever since 1892.

That on Nov. 4th, 1907, said Miller was acting in this very court as attorney for said defendant, the Standard Oil Company, and he, said Miller was then a resident and citizen of Chicago and a neighbor of said Mayer, and his associate, and was in possession or fully advised of the record of the several cases described in said petition, and he was the attorney for Mrs. Harding, and as such attorney knew all about the trial in California of her case and the contest there over the residence in California of said Harding, and was in communication with said Mayer; and said Miller attorney for the Standard Oil Company of New Jersey, one of these defendants, and the principal defendant too, as alleged in this bill; they were all known to each other as such attorneys, and Miller is mentioned in this record as Mrs. Harding's attorney by Mayer as shown by the certificate of evidence (Record, 175).

That Miller and Mayer have from the beginning mutually exchanged information as common attorneys of their respective clients, and on November 4th, 1907, Mayer and his clerk, Bangs filed said petition and both knew all about said litigation, repeatedly referred to in said petition of Bangs; and as petition itself declares, viz.: "were familiar with it" and made "careful, exhaustive and diligent search into the facts and circumstances detailed in said motion and petition as Bangs swears and he declared therein that complainant had removed to California and had left Illinois. (That besides the said Mayer was fully advised of said contest over said residence of said Harding, as shown in (140 Cal. Page) reversed by the Supreme Court, U. S. by 198 U. S. (Page) so often quoted by him and his clerk).

Affiant therefore states that Mayer, attorney of the Corn Products Mfg. Co. knew that on Nov. 4th, and Nov. 6th, when this petition was drafted which he seeks to amend, all matters and things now re-stated in said petition for leave to amend, and he and his client knew fully the facts known and testified to on the hearing of the said case in California, including the matters set forth in said petition as to residence, and it does not appear and cannot be shown that a single fact of any moment was stated in said petition to amend which was not known to said Mayer and his clients all the time ever since Nov. 4, 1907, as sufficiently appears by said petition of Nov. 4, 1907.

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As to matters in Point Five, of said replication, affiant states that admission of complainant to the bar was in 1901 and 1902, and was acknowledgment and finding and adjudication of the Supreme Court of California of his being a citizen and resident of said State of California and is binding as such and affiant attaches a copy of said certificate of his admission as a citizen and resident of California which was required by said Court to be proven before such admission was allowed.

Affiant further states that the finding of the chancellor in the California litigation that Harding was a resident of California and the affirmance of same by the Supreme Court as shown in 140 Cal. were left by the order of the Supreme Court of U. S. untouched, by said Court; in whose opinion the question of said residence was not re-considered and the California Supreme Court in (148 California) left the whole case open for further proceedings of said Chancellor, expressly as elsewhere quoted in complainant's answer in this case, thus expressly leaving the technical question of full faith and credit, etc., to be answered by such new answer to said estoppel as may be found or put in the record. That the truth is that the decree of the Illinois Court was not that certified and considered by the Supreme Court of the U. S., and this was due to the fact that the Clerk of the Circuit Court of Cook County was deceived as he testified in a subsequent independent suit, testifying that he certified into the transcript of the record of the Illinois case, a paper, which purported to be a true copy of the record of said decree, but in truth the said paper was not a true copy; and failing to contain the very language on which the reversal was ordered by the Federal Supreme Court.

That the pending of said case in San Diego has been ever since a matter of stipulation, of the parties, chiefly made in the absence of said complainant, who has been for so many years since 1902, ill and in Europe in Sanitariums and in charge of physicians for many years, and ever since 1902.

As to Point 6, Affiant states that he believes it to be a tissue of falsehoods.

That if it were true as stated therein, viz.: "The Corn Products Manufacturing Co. has in its possession true and correct copies of a large number of deeds and conveyances and other instruments" in which complainant was described as being in Illinois "and that a brief synopsis of said instruments picked out at random is as follows"; all of which affiant declares, was untrue, yet affiant says the said defend-

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ant could and should have shown in full the said certified copies it professed to have in hand, instead of Parmenter's "synopsis."

That the deliberate concealment and suppression of the said copies by said Mayer is indicative that said "Synopsis" is false and misleading; and therefore petitioner is suppressing the truth, in accordance with the other falsehoods of said replication; and affiant alleges that the said deeds and instruments do not exist as therein stated and complainant's residence was not given therein as stated and was certainly not so stated with the knowledge of said complainant.

That affiant knows and has examined the records in Cook County and State, that there are more than ten deeds of said complainant recorded in said County to one recorded elsewhere and in the distant counties described in said replication, and affiant has not been able to find one in which complainant was described as a resident of Illinois; and had there existed such it would be much more to the purpose than the alleged synopsis.

That this replication purports to be a reply to complainant's answer and affidavit of April 22nd, 1909, viz.: where it is stated that during the period of more than ten years past whenever in making deeds and other instruments or in registering at hotels, as he had occasion to do for perhaps a thousand times, during said period, he has always stated in such instruments in such hotel registers his residence in San Diego, in the State of California," and affiant states that it is an utter and absolute falsehood that the "few of said instruments picked out at random" of said synopsis are, even as there stated in said Parmenter's statement of the contents.

That the statement on its face is imperfect and deliberately given in the place of alleged copies; that complainant asked said Mayer when presenting said false replication in open court that the said alleged copies might be allowed to be seen by complainant, so as to answer same; and said Mayer at once refused them in open court, no reason being given except his declaration then made, in reply, that he would not allow the same to be seen.

Affiant further states that he is informed and believes that no such deeds exist, as stated in said replication; and no such copies can be produced; but dealing with the synopsis on its face, affiant states and calls attention to the fact that there are only eight deeds and of the alleged eight deeds, two of them on their face are not made by complainant at all; and if such

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deeds were made at all, as stated, they were made thirteen years ago; that all the others, save two, purport to be made more than ten years ago.

That the remaining two deeds purport to be made about seven years ago, and relate to property in Peoria County, Illinois, being town lots of small value which complainant *has never owned*, if at all, for many years.

That all the real estate that could have been conveyed by said alleged deeds must have been such property never owned by said complainant and in which he could have had no interest since he removed to California; and this is shown by the Replication itself in which he is stated to have made a conveyance in 1896 of all his Real Estate; and in which deed he declared himself to be a resident of California and of San Diego (See Page 6) of Replication.

Affiant further states that if copies of the two deeds "picked at random" can be produced, he believes that they will prove to be untruly stated in said replication; and probably not deeds by complainant at all; and that at most these two deeds alone will be found out of a thousand to the contrary, the remainder stating the truth as in the deed of 1896; and if such errors of description were made, said errors were due to accident, carelessness in drawing said unimportant deeds, or by clerical blunders of some clerks, upon whom a man of complainant's years, nearly eighty years, must necessarily depend; and they escaped his notice, and it will appear, when the truth is fully shown, that these statements of this replication are entirely false and not worth consideration, two and only two descriptions of complainant's residence standing against a thousand other descriptions of said residence.

Affiant further states that the said proposition alleged to have been made to the Municipal authorities of Chicago was objected to and refused amongst other reasons because said complainant was not at the time a citizen and resident of Illinois, but of California, as he was then very well known to be and as he has always been known to be such a resident; and as more fully is shown by the numerous affidavits, nearly twenty in number filed therein and treated as attached to this answer and objections; and affiant says similar affidavits could be secured indefinitely from former neighbors and friends, countless in number.

That the motives of said complainant in making said proposition appears by said proposition itself; and the following clause of said proposition will be sufficient to show that com-

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plainant still regarded and was moved by a love for his former residence and the people of Chicago and could properly describe them as our city and our streets; and that by said proposition he was only seeking to aid them in protecting their property and not seeking additional or new labor at his age, the clause is as follows:

"I should greatly prefer that some person or persons other than myself should be given the contract upon the same terms, and will gladly yield to some higher or better bidder for this valuable property; but I make this offer as the only way open to save the City from further injustice, and the present tenants should be required, at least, to meet these terms."

Further deponent saith not.

ABNER C. HARDING.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

ABNER C. HARDING, being duly sworn, says that he is familiar with the matters stated in said affidavit and is informed and believes he is fully acquainted therewith and he states that said foregoing affidavit by him subscribed is true to the best of his knowledge, information and belief.

ABNER C. HARDING.

Subscribed and sworn to before me, a Notary Public, this 21st day of May, A. D. 1909.

ALICE WILLNER,
Notary Public.

(SEAL)

"Alice Willner
Notary Public
Cook Co. Ill."

The Court further certifies that the following petition was presented by complainant on June 30, 1909, but was not permitted to be filed:

Petition of Harding presented June 30, 1909, not allowed to be filed.

PETITION DATED JUNE 29 AND PRESENTED JUNE 30, 1909.

United States of America,
Northen District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and For the Northern District of Illinois,

EASTERN DIVISION THEREOF.

George F. Harding,
Complainant,
vs.
Standard Oil Company of New Jersey, *et al.*, *Defendants.*
} In Chancery, No. 28,865.

Now comes the said complainant, George F. Harding, appearing specially herein, and, while saving and reserving, and preserving his objections heretofore made to the jurisdiction of this court in this cause, as stated in his motion filed herein on December 23, 1907, to remand said cause to the State Court and as otherwise stated of record in this cause, and still insisting that this Court has not and never had any jurisdiction of or in this cause, or over or against this complainant in said cause, or any authority or power therein except to remand the said cause to the State Court, and saving and reserving, and preserving his objections and exceptions to the several orders of this court in this cause, and every of them, and every part thereof, and insisting that all and every of said orders, including, particularly, the order permitting amendment to removal petition in said cause, were and are without power or authority or jurisdiction on the part of this court, and therefore wholly null and void, this complainant respectfully represents and states to the court the following, namely:—

1. That the Corn Products Refining Company (one of the defendants in this cause, and one of the defendants in the suit in Chancery brought by the Chicago Real Estate Loan & Trust Company, an Illinois corporation, as complainant, against the said Corn Products Refining Company, and others, as defendants, in the Circuit Court of Cook County, Illinois, on May 4, 1907, and removed to this Court on June 8, 1907,

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being a suit in chancery numbered 28695 in this Court) presented to this Court on November 4, 1907, its petition (or motion) entitled and filed in the said Real Estate Company's suit, purporting to be sworn to upon that date by one Hal C. Bangs, which petition (or motion) now remaining on file in the said suit Numbered 28695 is hereby referred to and made a part of this petition, and an exhibit hereto.

2. The said petition (or motion) of November 4, 1907, was so presented on that date to this Court in said suit numbered 28695, by one Levy Mayer, acting as the attorney and solicitor of the said petitioner, *ex parte*, and without notice to and without the knowledge of the said Real Estate Company, or this complainant, or any other person, or persons, other than the said Corn Products Refining Company, and upon such presentation thereof an order was entered in said suit numbered 28695 by this Court on that date, November 4, 1907, *ex parte*, and without notice, as aforesaid, restraining this complainant, George F. Harding, and his solicitor, A. B. Joyner, from further prosecuting this suit, now numbered 28865, in this Court, and then pending in the Superior Court of Cook County, Illinois, until the hearing and disposition of said petition (or motion) for injunction, and ordering this complainant, and the said A. B. Joyner to show cause on November 12, 1907, why an injunction should not issue against their further prosecution of *this* suit, to which order of November 4, 1907, reference is hereby made, and the same, as a part of the record in said Real Estate Company case, is made a part of this petition, and an exhibit hereto.

3. On November 5, 1907, the Corn Products Manufacturing Company filed in *this* suit (now No. 28865) in the said Superior Court of Cook County, its petition, in the said State Court, for removal of this cause to this court, and on the same date gave notice to the said A. B. Joyner, as the solicitor for your complainant in said cause (now No. 28865) that, on Wednesday, November 6, 1907, at the hour of 10 o'clock A. M., the said petition for removal would be presented before his Honor, Judge Ball, then and still one of the Judges of the said Superior Court, in chancery sitting, which said petition for removal and said notice now appear of record in *this* cause (now No. 28865) and the same are hereby referred to and made a part of this petition, and exhibits hereto.

4. Instead of waiting, however, for the said Judge Ball to pass upon the said petition for removal, the said Corn Products Manufacturing Company, without notice to and

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without the knowledge of this complainant, and without notice to and without the knowledge of any solicitor or agent of this complainant, appeared before this Court on November 6, 1907, and obtained an order granting leave to the said Corn Products Manufacturing Company to file in this Court a transcript of the record of the said Superior Court of Cook County, in *this* cause, and staying the further prosecution thereof in the said State Court, and enjoining this complainant, George F. Harding, his agents, representatives, counsel solicitors and attorneys, from proceeding further with the prosecution of said cause in the said Superior Court, until the further order of this Court, to which order of November 6, 1907, reference is hereby made and the same is hereby made a part of this petition, and an exhibit hereto.

5. And on the said date, November 6, 1907, said Corn Products Manufacturing Company, also filed in this cause in this Court, without leave of Court, and without notice to, and without the knowledge of this complainant, or any agent, or attorney, or solicitor of this complainant, a certain so-called supplement to its said Removal Petition, said so-called supplement having attached thereto the affidavit of G. W. Powers, purporting to be sworn to by said Powers, on November 6, 1907, to which supplement, with said affidavit, reference is hereby made and the same is hereby made a part of this petition, and an exhibit hereto.

6. As soon as this complainant, George F. Harding, learned of the said entry of the said order of November 6, 1907, in this cause, this complainant applied to this court for leave to present his motion to remand this cause to the said Superior Court, and, on December 23, 1907, this complainant filed herein his motion in writing to remand this cause to said Superior Court, and presented the same to this Court, before Judge Landis, on December 26, 1907, and then asked that the said motion to remand filed in this cause be granted by this Court, but the said Judge thereupon refused to grant the same, and then stated that the same would not be allowed, and, thereupon, at the instance of said Mayer, as solicitor for defendant in said cause, entered an injunction in that suit, Numbered 28695, under date of December 13, 1907, restraining this complainant from further proceeding with his said motion to remand this cause, and from taking any other steps whatsoever in this cause, the said proceedings of November and December, 1907, being in the said suit No. 28695, as shown by the record of this Court in that cause, including the Cer-

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tificate of Evidence signed by said Judge Landis, and filed in that cause on April 30, 1908, to all of which record, including said certificate of evidence, and including the petition for and allowance of appeal from said order entered under date of December 13, 1907, reference is hereby made, and the same is made a part of this petition, and presented herewith as an exhibit to this petition, and your petitioner prays that the same may be made a part of the record in this cause, No. 28865, in order that all the facts touching his said motion to remand this cause to said Superior Court may be thus made a part of the Record in this cause, numbered 28865. And on the 29th day of June, 1907, the mandate of the United States Court of Appeals, for the Seventh Circuit, showing, among other things, the reversal of said order of date December 13, 1907, was filed in this Court, in said cause, No. 28695, to which mandate reference is hereby made and the same is made a part of this petition, and an exhibit hereto, so that now for the first time this complainant is free to move in this cause for remand of the same to said Superior Court.

7. By way of further precaution, and to prevent misunderstanding, this complainant now requests and moves this court to now enter an order herein upon his said filed motion to remand, based upon the said proceedings and record of November and December, 1907, and upon the said petition for removal, as it then stood in this cause, when the said motion to remand was filed herein, and when the said motion to remand was then refused even a hearing, and thus denied, and enjoined, by this court, and held and declared by this court to be disposed of and covered and enjoined by the said injunction in the said Real Estate Company's suit; with only the right given to this complainant to apply for leave to intervene in the said Real Estate Company's suit, and reserving the right and power to compel this complainant to dismiss this suit, as shown by the said record in the said Real Estate Company's suit, which injunction has now been reversed by the United States Circuit Court of Appeals, of the Seventh Circuit, as shown by the said Mandate of that Court this day filed in this Court in the said Real Estate Company's suit, to which mandate reference is hereby again made, and the same is made a part of this petition, it, thus, thereby appearing, and this petitioner, said George F. Harding, also states, that this present date is the first day on which any steps could be taken in this present suit by this complainant since the said entry of the said order of November 4, 1907,

the said injunction order of date, December 13, 1907, by
pursuant to said mandate being on this date, for the first tim
vacated, and set aside, and the said suit of said Real Estat
Company, and said petition (or motion) of November 4, 190
having been this day moved by said Real Estate Company t
be dismissed by order of this Court, pursuant to said mandate
to which order of dismissal when entered pursuant to said mo
tion this day made, reference is hereby made and the same i
hereby made a part of this petition, as an exhibit hereto.

Wherefore, this complainant represents and shows to thi
Court that this complainant is now entitled to have entere
of record herein an order remanding this cause to said Su
perior Court, on his said motion to remand filed herein o
December 23rd, 1907, the same order as this complainant wa
said removal petition herein be disregarded by this Cour
to grant the same, and the same was then wrongfully and unlaw
fully refused and enjoined by said order of December 2
1907 entered under date of December 13, 1907, this cause hav
ing been surreptitiously and wrongfully and unlawfully re
moved to this Court and thus held in this Court as above se
forth, and this complainant now prays that such order re
manding this cause to said Superior Court be now entere
herein, accordingly; and to the end that all obstacles that ma
be or be claimed to be in the way of such remand, may be re
moved, this complainant further requests and moves th
Court to wholly disregard said supplement filed herein o
November 6, 1907, and, if need be, that the same be stricke
from the files, and that the petition filed herein on April 1
1909, for leave to amend said removal petition herein, be di
regarded by this Court, and, if need be, stricken from the file
and that the order of this court permitting amendment t
said removal petition herein be disregarded by this Cour
and, if need be, vacated and set aside, and that the amend
ment filed herein on June 14, 1909, to said removal petition h
disregarded by this Court, and, if need be, stricken from th
files, and this complainant respectfully represents and stat
that the averments in said amendment filed herein on Jun
14, 1909, that this complainant was, on October 19, 1907, o
since that date, a citizen of Illinois, and a resident of the Cit
of Chicago, in said State, are entirely untrue, and, in fac
and in truth, this complainant, George F. Harding, was, o
October 19, 1907, and continually since has been a resident
and citizen of the State of California and of no other state
or country; and this complainant further respectfully shows,

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while protesting and objecting, as above stated, against the efforts of the Corn Products Manufacturing Company herein, to amend its said removal petition herein, and protesting and objecting that the allowance and filing of the said amendment were and are contrary to all precedent and the practice of this Court, and in violation of the law, and that said amendment is a mere attempt to defeat the restrictions upon the jurisdiction of this Court, imposed by the Acts of Congress of 1887-1888, as declared and enforced by the United States Supreme Court in the case of *ex parte Wisner*, and a mere repetition of the same effort attempted by said injunction above set forth, and this complainant having denied and still denying the said allegations of citizenship made in said amendment, as elsewhere more fully shown of record in this case, respectfully prays that this Court will promptly pass upon this complainant's said motion to remand this case upon the basis of the said written motion filed herein on December 23, 1907; and this complainant further prays that in the event this Court shall deny the said motion to remand, that your petitioner be permitted to join issue upon the said averments of citizenship in the said amendment to said removal petition, without waiving his rights and contentions set forth in this petition, and that a prompt hearing be had upon said issue of fact, to the end that a petition for mandamus may be presented promptly by this complainant to the Supreme Court of the United States, to compel a remand of this case to the State Court at the earliest possible moment, to-wit: at the beginning of the October term A. D. 1909, of said Supreme Court, so that one and the same petition for mandamus may present completely to that Court the entire action of this Court, in the premises, together with whatever evidence may be presented upon said issue of citizenship, all to the end that there may be a speedy administration of justice in this case, and technical obstacles be avoided, and possible injustice prevented that might arise out of or result from a partial submission in such petition for mandamus of the rights of this complainant to have this cause remanded to the said Superior Court, where this complainant claims he has a constitutional right, under the law, to have this case heard, of which right he has been so long deprived by said injunction of this court and by the action of the defendants herein; and your petitioner prays that the right of this complainant to have his said motion to remand this cause to said Superior Court allowed upon the record

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herein, as it existed at the time said motion to remand was filed herein, and presented to this Court, may now be recognized and enforced, and that the right of this complainant to proceed with the prosecution of this suit in said State Court may be no longer wrongfully and unlawfully defeated and delayed as has been to this time wrongfully and unlawfully done, as above set forth; and this petition is presented without waiving the right of this complainant to formally join issue on said removal petition as amended herein, as aforesaid, and have such issue tried, in the event that the prayer of this petition be denied by this Court; and your petitioner will ever pray, etc.

GEORGE F. HARDING,
Petitioner.

State of Illinois, }
County of Cook. } ss.

George F. Harding, being first duly sworn, states on his oath that he is the petitioner whose name is subscribed to the foregoing petition; that he has read the said petition and knows the contents thereof and that the same and the matters therein stated are true, as therein stated, of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true. Further affiant saith not.

Dated this 29th day of June, A. D. 1909.

GEORGE F. HARDING.

Subscribed and sworn to before me, this
29th day of June, A. D. 1909.

ALICE WILLNER,
Notary Public in and for Cook County, Illinois.

(SEAL)

The proof offered in support of said petition.

Complainant offered in evidence *in support of said petition* the evidence already appearing in this Certificate of Evidence and the original Mandate of the Court of Appeals referred to in said petition, which Mandate is as follows:

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MANDATE FROM COURT OF APPEALS DATED JUNE 28, 1909.

United States of America, } ss.

The President of the United States of America, To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, Greeting:

(Seal)

Whereas, lately in the Circuit Court of the United States for the Northern District of Illinois, before you, or some of you, in a cause between George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen, and Corn Products Refining Company, the decree entered under date of the thirteenth day of December, 1907, is in the words and figures following to-wit:

United States of America, Northern District of Illinois, Eastern Division. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES

In and for the Northern District of Illinois.

Eastern Division thereof, In Equity.

Chicago Real Estate Loan & Trust Company, *vs.* Corn Products Company *et al.* } No. 28,695.

This day comes on to be heard the motion of the defendant, Corn Products Refining Company, entered of record herein November 4, 1907, for an injunction restraining the prosecution of the suit of George F. Harding vs. Standard Oil Company, of New Jersey, Corn Products Refining Company et al., filed in the Superior Court of Cook County, Illinois, on or about

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October 19, 1907, and bearing General Number therein 263,-565, and for an order to compel the dismissal of the said last described suit; and there also now coming on to be heard the rule entered herein on November 12, 1907, against George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, to show cause why they and each of them should not be attached for contempt of this court for violating the restraining order entered herein on June 8, 1907; and the court having heard and considered the answers to said rule, filed herein on November 13, 1907, by said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and having considered the petition of said Corn Products Refining Company, filed herein on November 4, 1907, and the exhibits thereto, and all the records and files herein, and all the oral evidence given by and statements of said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, in open court; and the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner being now present in open court, in person, and being also represented by said George F. Harding and William J. Ammen, as their solicitors; and the court having heard the arguments of Levy Mayer, Esq., solicitor for said petitioner, and of said solicitors for said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and being now fully advised in the premises;

The Court finds that by the institution of said suit of George F. Harding vs. Standrad Oil Company, of New Jersey, et al., the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner have, and each of them has knowingly and wilfully violated the order of this court, entered herein on June 8, 1907, but the court of its own motion hereby discharges the said rule of November 12, 1907, for contempt, without the infliction of any punishment on any of the said respondents to said rule; and

The Court further finds that the further prosecution of said suit of George F. Harding vs. Standard Oil Company, of New Jersey et al., and the institution by said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, of any action like or similar to the present cause should be enjoined.

Wherefore, the premises considered, it is hereby Ordered, Adjudged and Decreed that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solic-

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itors and representatives be, and they hereby are, jointly and severally, restrained and enjoined until the further order of this court, from further prosecuting or taking any steps or proceedings of any kind in said case of George F. Harding vs. Standard Oil Company, of New Jersey, Corn Products Refining Company et al., which was instituted in the Superior Court of Cook County, Illinois, on October 19, 1907, and was numbered therein 263,565, and which case was subsequently docketed in and is now pending in this court as case numbered 28,865.

It is hereby further Ordered, Adjudged and Decreed that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solicitors and representatives be, and they hereby are, jointly and severally, restrained and enjoined, until the further order of this court, from in any manner whatsoever, either directly or indirectly, instituting or prosecuting, or causing or inspiring to be instituted or prosecuted, in any court, forum, place or jurisdiction whatsoever, any other suit, action or proceeding making charges and seeking relief like or similar to the charges contained and the relief sought in the case herein of Chicago Real Estate Loan & Trust Company against said Corn Products Company et al., but said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, jointly or severally, by an appropriate proceeding or petition and upon a proper showing, may apply to this court for leave to intervene herein or become parties hereto, and

It is further hereby Ordered that that part of said motion of said defendant, Corn Products Refining Company, seeking an order compelling the dismissal of said suit of George F. Harding vs. Standard Oil Company, of New Jersey, et al., be and the same hereby is continued and reserved for the futuer consideration of this court.

And to this order and decree and every part thereof, the said George F. Harding and A. B. Joyner, George F. Harding, Jr., and William J. Ammen, jointly and severally, object and except, denying and objecting to the jurisdiction of the court, and they, and each of them, are hereby granted thirty days from this date within which to present to this court a certificate of evidence to be signed and filed and made a part of the record herein as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the

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United States Circuit Court of Appeals for the Seventh Ci
cuit by virtue of an appeal agreeably to the act of Congres
in such case made and provided, fully and at large appears.

And Whereas, in the term of October, in the year of ou
Lord one thousand nine hundred and eight, the said caus
came on to be heard before the said United States Circui
Court of Appeals for the Seventh Circuit, on the said tra
script of record, and was argued by counsel:

On Consideration Whereof, It is now here ordered, adjudge
and decreed by this Court that the order or decree appeale
from be, and the same is hereby reversed with costs; an
that this cause be, and the same is hereby remanded to th
said Circuit Court with direction to dismiss the bill of th
Real Estate Company in conformity with one or the other m
tions filed therefor and that the petition for an injunction h
thereupon dismissed.

Tuesday, January 19, 1909.

And afterwards, to-wit: On the sixteenth day of February
1909, there was filed in the office of the clerk of this Court,
Petition for Rehearing, which Petition for Rehearing was, o
the nineteenth day of February, 1909, overruled, and the Man
date stayed until further order of this Court; and afterward
on the nineteenth day of May, 1909, said order staying Ma
date was vacated and set aside.

You, therefore, are hereby commanded that such furthe
proceedings be had in said cause, as according to right an
justice and the laws of the United States, ought to be had, th
said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justic
of the United States, the twenty-eighth day of June, in th
year of our Lord one thousand nine hundred and nine.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court
Appeals for the Seventh Circuit.
Office of the Clerk

UNITED STATES CIRCUIT COURT OF APPEALS

at Chicago

Corn Products Refining Co.

To Edward M. Holloway, Clerk, Dr.

BILL OF COSTS.

George F. Harding, et al.
vs.
Corn Products Refining Co.

In Cause No. 1497.
October Term, 1909.

	Cost of Each Item	
Docketing a case and filing the record.....	$5.00	5.00
Entering an appearance.....	25	75
Transferring a case to the printed calendar	1 00	1 00
Entering a continuance.....	25	
Filing a motion, order, or other paper.....	25	12 75
Entering any rule, or making or copying any record or any other paper, for each one hundred words	20	
Argument	20	40
Order	20	3 80
Entering a judgment or decree.....	1 00	1 00
Every search of the record of the court and certifying the same	1 00	
Affixing a certificate and a seal to any paper	1 00	
Receiving, keeping and paying money, in pursuance of any statute or order of court, one per cent on the amount so received, kept and paid		
Preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, for each printed page of the record and index.....	25	106 25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing).....	20	

Issuing a writ of error and accompanying papers, or a mandate or other process....	5 00	5 00
Filing briefs for each party appearing.....	5 00	25 00
Attorney's docket fee	20 00	20 00
Cost of printing record	.....	385 30
Cost of patent sheets for record.....	.....	.....
		566 23

Paid.....

Balance due....

Received payment .....19....

.....

Clerk United States Circuit Court of Appeals for the Seventh Circuit.

(Endorsed) Filed June 29, 1909, H. S. Stoddard, Clerk.

Recital that order of July 9, 1909, referred to said petition presented June 30, 1909.

The concluding sentence of the order of July 9, 1909, fixing term probatory has reference to the foregoing petition.

A. L. SANBORN.

Nov. 19, 1909.

Recital that the foregoing was all the evidence, etc.

The foregoing was all the evidence admitted, heard or considered by the Court on the hearing of said motion to amend the removal petition. Other matters offered but not considered or filed are also included in the foregoing certificate of evidence, as appears therein. This certificate is made for the purpose of making such matters a part of the record herein.

The Court further certifies that the portions of this certificate which were not considered by the Court are inserted herein at the request of the complainant.

A. L. SANBORN.

Dated Nov. 19, 1909.

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EXHIBIT A.

Part II.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1908.

CORN PRODUCTS REFINING COMPANY,
Petitioner

vs.

GEORGE F. HARDING, GEORGE F. HARDING, Jr., A. B. JOYNER and WILLIAM J. AMMEN,
Respondents.

Petition for Writ of Certiorari to Circuit Court of Appeals for the Seventh Circuit.

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Pleas in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, in Chancery sitting at the United States court room, in the City of Chicago, in said District and Division, before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on Friday, the thirteenth day of December, being one of the days of the regular July Term of said Court, begun Monday, the first day of July, in the year of our Lord one thousand nine hundred and seven, and of our independence the one hundred and thirty-second year. Placita.

H. S. STODDARD,
Clerk.

Order of June 8, 1907.

2 IN THE CIRCUIT COURT OF THE UINTED STATES

For the Northern District of Illinois—

Eastern Division.

Chicago Real Estate Loan and Trust Company, *vs.* Corn Products Company, a corporation, Corn Products Refining Company, a corporation, Corn Products Manufacturing Company, a corporation, New York Glucose Company, C. H. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, E. T. Gorman, T. B. Waggoner, H. C. Herget, T. C. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut,	28,695

Be it Remembered, That on this day to-wit: the eighth day of June, 1907, in the record of proceedings of said Court in the above entitled cause appears before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, the following entry to-wit:

ORDER OF JUNE 8, 1907.

Leave Given to File a Transcript of Record From the Circuit Court of Cook County.

Chicago Real Estate Loan and Trust Company, *vs.* Corn Products Company, *et al.*	28695

Upon motion of Messrs. Moran, Mayer and Meyer, solicitors for the Corn Products Manufacturing Company, one of said defendants, leave is hereby given to file and there is hereby ordered filed herein, a transcript of the record of the Circuit Court of Cook County, Illinois, in the case of Chicago Real Estate Loan and Trust Company vs. Corn Products

3

Company, et al., being case No. 279,135, of said Circuit Court of Cook County; and Order of June 8, 1907.

It is hereby further ordered that the further prosecution by said Chicago Real Estate Loan and Trust Company of said suit in said Circuit Court of Cook County, Illinois, shall be and the same is hereby stayed, and said Chicago Real Estate Loan and Trust Company, its officers, agents, representatives, counsel, solicitors and attorneys are hereby enjoined from proceeding further with the prosecution of said case in said State Court; all until the further order of this court.

4 And on the same day to-wit: the eighth day of June, 1907, come the Corn Products Manufacturing Company by its solicitors, Messrs. Moran, Mayer and Meyer and by leave of Court first had and obtained filed in the clerk's office of said Court its certain transcript of record from the Circuit Court of Cook County, Illinois, in words and figures following, to-wit: Placita.

TRANSCRIPT OF RECORD FROM CIRCUIT COURT OF COOK COUNTY.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

PLEAS, before the Honorable Lockwood Honore, one of the Judges of the Circuit Court of Cook County, Illinois, at a term thereof begun and held at Chicago, in the Court House in said County and State, on the third Monday (being the 20th day) of May in the year of our Lord one thousand nine hundred and seven and of the Independence the one hundred and thirty-first.

Present, Honorable Lockwood Honore, one of the Judges of the Circuit Court of Cook County, State of Illinois.

John J. Healy, State's Attorney.

Christopher Strassheim, Sheriff.

Attest: Joseph E. Bidwell, Jr., Clerk.

Bill of Complaint filed May 4, 1907.

Be it Remembered that heretofore to-wit: on the 4th day of May, A. D. 1907, a certain bill of complaint was filed in the office of the clerk of said Court, in words and figures following, to-wit:

5 STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY.

To the May Term, A. D. 1907.

To the Honorable, the Judges of the said Circuit Court, in chancery, sitting:

Your orator, Chicago Real Estate Loan & Trust Company, a corporation duly organized and existing under the Laws of the State of Illinois, with its principal office in the City of Chicago, in the County of Cook, in the State of Illinois, humbly complaining, respectfully represents unto your Honors that on or about the 6th day of February, A. D. 1902, your orator, in the regular course of its business, became the holder and owner of one thousand shares of the capital stock of the Corn Products Company, a corporation duly organized and existing under the laws of the State of New Jersey, and then, and ever since, and still doing business in the State of Illinois, and elsewhere, the par value of the said shares of stock so acquired by your orator being the sum of One Hundred ($100.00) Dollars each, four hundred and fifty of the said shares being preferred stock of the Corn Products Company, and five hundred and fifty thereof being common stock of the said company, the value of the said preferred stock being then the sum of about ninety dollars per share, and the value of the said common stock being then about the sum of about forty dollars per share.

2. At the time your orator acquired the said stock, and for considerable period theretofore, and for some time thereafter, the said Corn Products Company held and owned a controlling interest in a number of large and valuable factories in the State of Illinois, and elsewhere, then and theretofore used in the manufacture of glucose, and other marketable products, which business was then and theretofore yielding a large profit to all the stockholders of the said Corn Products Company, in the way of dividends on said stock paid from the net profits of the said business, the capital stock of the said

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Corn Products Company being then three hundred thou- Bill of Complaint filed May 6 1907.
6 sand shares, of the par value of One Hundred Dollars ($100.00) each, preferred stock, aggregating in par value the sum of Thirty Million Dollars, and five hundred thousand shares of the par value of One Hundred Dollars each, common stock, aggregating in par value the sum of Fifty Millian Dollars.

3. Among the said factories so controlled by the said Corn Products Company, at the time aforesaid, were the following, namely, the property formerly owned and operated by the Rockford Sugar Refining Company, at Rockford, Illinois, the property formerly owned and operated by the American Preservers Company, Marshall Town, Iowa, the property formerly owned and operated by the Chicago Sugar Refining Company, in Chicago, Illinois, the property formerly owned and operated by the Peoria Grape Sugar Company, in Peoria, Illinois, and the property formerly owned and operated by the American Glucose Company, in Peoria, Illinois, the legal title to the properties above mentioned being at the time your orator acquired the said stock, and ever since, and still in the Glucose Refining Company, a corporation organized and existing under the Laws of the State of New Jersey and doing business in Illinois, and Iowa, and elsewhere, the operation and management of the said properties being by and in the name of the said Glucose Sugar Refining Company, but for the sole benefit of the Stockholders of the said Corn Products Company and under the direction and control of the said Corn Products Company, at the time your orator acquired the said stock, and thereafter, except as hereinafter shown in this Bill of Complaint.

4. In addition to the properties above mentioned the said Corn Products Company, during the same period, held and owned a controlling interest in other factories, in Illinois, and elsewhere, operated and managed in various names for the benefit of the stockholders of the said Corn Products Company at the time of your orator's purchase of the said stock, and thereafter, except as hereinafter shown in this Bill of Complaint.

7 5. During the same period the New York Glucose Company, a corporation organized and exsting under the Laws of New Jersey, owned, operated and controlled certain other factories in New York and elsewhere in the manufacture of glucose and other products; that said New York Glucose Company was organized and is now controlled by E. T. Bed-

Bill of Complaint filed May 4, 1907.

ford and associates of said E. T. Bedford, who were and a stockholders as your orator is informed, officers of the Stan ard Oil Company and who were stockholders, officers a directors of said Corn Products Company; that 49% of t capital stock of said New York Glucose Company was he owned and controlled by the said Corn Products Company a the remaining 51% thereof by said E. T. Bedford and h said associates who were and are commonly known as "Stan ard Oil People."

6. That prior to the first of January, 1906, the exact dat being unknown to your orator, one C. H. Matthiessen, Norma B. Ream, William W. Heaton, Joy Morton, J. B. Greenhut C. L. Glass, E. A. Matthiessen, W. J. Calhoun, W. T. Gorman T. B. Waggoner, H. C. Herget, T. B. Kingsford and F. C Sherwood and others, as officers and directors of said Cor Products Company and as the owners and holders of the ma jority of the capital stock of said Corn Products Company combining and confederating together and with "Standar Oil People" who were officers and directors of said New Yor Glucose Company and the owners and holders of the majorit of the capital stock of said New York Glucose Company, en tered into an unlawful conspiracy to cheat and defraud you orator as the holder of the said one thousand shares of stoc aforesaid, and other holders and owners of the stock of th said Corn Products Company not parties to said conspiracy by destroying the market value of the stock so held by you orator, and others, in the said Corn Products Company, an depriving your orator, and said other stockholders, thereof without any compensation or return therefor, the method o such conspiracy being the formation of another giant corpora tion known as the Corn Products Refining Company, organ ized and existing under the Laws of the State of New Jersey and owned and controlled by the said C. H. Matthiessen and Norman B. Ream and others of the aforesaid officers

8 directors and stockholders of the said Corn Product Company, and the said "Standard Oil People" whos names, except said E. T. Bedford, are now unknown to you orator, but, when their names shall have been ascertained b your orator, your orator will ask leave to amend this Bi of Complaint and make the said parties defendants thereto and as a part of said conspiracy the said Matthiessen and hi co-directors gave to said E. T. Bedford and his said asso ciates, connected with him, as aforesaid, of the so-called Standard Oil Company, the control of said Corn Product

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Company as would best serve to enable said E. T. Bedford and directors named by him and parties conspirators with him to form said refining company and give to it the business of said Corn Products Company, all its trade, secrets, and all the factories belonging to said company. Bill of Complaint filed May 1907.

That in advance of said transfer and to enable them to carry through such transaction and transfer, the officers and directors of said Corn Products Company discouraged the stockholders of said company by, amongst other things, concealing its business and making reports to said stockholders, such as would induce them to sell out their stock and to make the proposed transfer as before stated. That by said transaction and transfer, said conspirators sold out the whole property of said old company to said new company without any adequate consideration.

That in reality the contract and transfer was one by which the said Bedford and associates acquired and received the said property of said Corn Products Company for a part of the stock of said new company created for that purpose taking for themselves thirty millions of the stock and leaving to the stockholders of the old company, fifty millions thereof, giving out eight millions in all of stock of said new company and acquiring for themselves said thirty millions of said stock as the pretended value of two certain factories in Illinois and 51 per cent. of the stock of said New York Glucose Company.

9 That said Corn Products Company was formed in New Jersey under its laws and organized for the purpose of manufacturing glucose and starch and their by-products. That C. H. Matthiessen and his relatives residing in New York and Chicago and parties under his influence and control were, and always have been, the chief stockholders and officers of said company. That said company has, from the beginning of its existence, been subject to the attacks of hte Standard Oil Company of America, represented by said Bedford and his said associates deputed by said Company, or representing it, or parties in its interest who have sought to own and control it. That one of their modes of attack has been the construction of the factory of the said New York Glucose Company through which said Bedford and his said associates sought to break down said Corn Products Company, and finding this difficult and with a view of better understanding the condition of the company so as to appropriate its property and destroy said company, and its said New York Glucose Company's factory proving unprofitable, by selling to said Corn

Bill of Complaint filed May 4, 1907.

Products Company 49% of the stock of said company retaining 51% and the control of said New York Company.

That said Bedford, and his said associates and friends and parties in interest, sought to buy up the stock of said Corn Products Company and, for that purpase, depreciated the stock of said company by sales of large quantities of stock on the stock exchange constantly lowering the price in immense amounts and buying it in so that they were not compelled to deliver said stock, the sales being unreal, never transferred nor meant to be, but serving the purpose of cutting down the stock of the Corn Products Company so that the fifty millions of common stock was cut down in price by these false sales on the stock exchange to less than $10 a share or a tenth of its original issue or supposed value, and said preferred stock amounting to thirty millions of said eighty millions of stock was cut down in price to one-fourth of its par value at which it was issued and which it was fully worth —judged by price on said stock exchange, as fixed by the false sales aforesaid; the efforts of the stockholders of the Corn Products Company being overwhelmed and defeated from maintaining the price of the same on said stock exchange by the magnitude of said sales equal in some cases to daily sales of nearly the full amount of the entire stock of the company and this although said "Standard Oil People" did not own 10% of the stock of the company and no deliveries were made, the sales being purely false and fraudulent. That said Bedford and his said associates, having depreciated the stock frightened the stockholders and reduced the values in appearances so that they could readily buy it up, so far as they were to be driven into sales they, said Bedford and his said associates, set to work to buy certain competing factories namely, the so-called Wagner Factory, in Lake County, Illinois, and to so-called St. Louis factory, near East St. Louis, and did this by advancing money to support said factories, the owners then seeking additional capital compelled by ruinous low prices of glucose, starch and by-products which they manufactured, and encouraged said factories then and there controlled to do as large and larger business, though at a loss, and to reduce the price of Glucose and starch and by-products.

That for the purpose of using more effectually the prejudicial effects upon the said Corn Products Company, the said Bedford and his said associates entered into the aforesaid conspiracy with said C. H. Matthiessen and his friends and

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fellow directors and fellow officers who were then the managers of said Corn Products Company and by that means and by weak and partial reports giving imperfect accounts of the doings of the Corn Products Company and, enabled by access to the books of said Company, and by a knowledge of its business said Bedford and his said associates, with the aid of said C. H. Matthiessen, and others, let the market of said glucose, starch and by-products fall as far as possible into the hands of said factories controlled by them, said Bedford and his associates, who had, in the meantime, obtained by purchase or options to purchase, at a low price the stock of said outlying companies so that it could be said to stockholders of the Corn Products Company that about half of the glucose, starch and by-products produced in the market was sold
11 and the market shared to the extent of nearly 50% thereof by said companies and said New York Company, although your complainants allege that the facts was that said manufacture was at a loss.

Bill of Complaint filed May 1907.

That in point of fact the said conspirators by this plan proposed to give thirty millions of stock of the old company to themselves in the form of the stock of the new company for little or nothing.

That the result as to the public of this transaction, is that all competition has been destroyed and the Corn Products Refining Company is as fully in possession of glucose and by-products and an absolute monopoly is and was thereby created without any considerable cost and all competition is destroyed. The new company being now able to fix a price to the public at its pleasure and the public will be compelled to pay whatever the said Bedford and his Standard Oil friends choose to set up said products.

At the time your orator purchased said stock, as aforesaid, and for a long time prior thereto, and for a considerable period thereafter, the capital stock of the said Corn Products Company was duly listed upon the stock exchanges of New York, and Chicago, and other large cities, and was daily bought and sold, in open market, as one of the standard investments of the country, the market value thereof being as above stated, and the same was not a fictitious valuation but was based upon the ownership of the properties above described, and other valuable properties and the profitable manu-
12 facturing business to the carrying on of which all the said properties were devoted by the parties aforesaid, for the benefit of the said Corn Products Company, and its

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stockholders, including your orator, as aforesaid; and, in reliance upon the said facts, your orator acquired the said stock with the view of holding the same as an investment, and your orator has ever since held, and still holds the same for such purpose, and at the time your orator so acquired the same, and for about four years thereafter, the said Corn Products Company, was paying regularly a dividend to the holders of the said stock, including your orator, at the rate of 1 & ¾% per cent, per quarter, on the par value of said stock, from the profits of the said business so controlled by the said Corn Products Company and so conducted and managed for the benefit of the said Corn Products Company, and its stockholders, including your orator; and it was the duty of the said Corn Products Company, and its officers and directors, to continue to so manage its affairs, including the said properties and business above mentioned, through its control thereof, as aforesaid, that such dividends upon its stock should and would continue from year to year, and your orator avers that if the said Corn Products Company, and its officers and directors, had, honestly and in good faith, continued its said business, and the management thereof, the said stock of your orator, together with the stock of other stockholders in said Corn Products Company, not parties to said conspiracy, would still be earning and paying such dividends, and now be worth One hundred Dollars ($100.00) per share; but, instead of that now being the case, your orator avers that by reason of the bad faith, and misconduct, of the officers and directors of the said Corn Products Company, and others, pursuant to and as a part of the said conspiracy, the entire stock of the said Corn Products Company has, by reason of the said conspiracy and the said wrongful conduct, pursuant thereto, ceased to be a listed stock, and ceased to pay or earn dividends, and its value has thus been entirely destroyed, the said conspirators having fraudulently caused the same to be dropped from the list of the said stock exchanges, and having fraudulently stopped the payment of dividends
13 thereon, pursuant to said conspiracy, and are now managing all of the said properties in the exclusive interest of said conspirators, and in total disregard of the rights of your orator as the owner and holder of the said stock, and in total disregard of all the rights of the holders and owners of the stock of the said Corn Products Company, other than said conspirators.

8. Your orator further represents that, pursuant to said

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conspiracy, and for the fraudulent purposes aforesaid, said conspirators are now planning and arranging to cause all of the said poperties, and the said business to be transferred and conveyed to the said Corn Products Refining Company, and thus permanently destroy the value of your orators' said stock and the value of the other stock of the said Corn Products Company held or owned by persons or parties other than said conspirators, and your orator brings this Bill of Complaint not only for the benefit of your orator, but also for the benefit of the holders and owners of the stock of the said Corn Products Company, in the same situation as your orator, and said other holders and owners of the said stock are hereby invitled to come in as co-complainants with your orator in this Bill of Complaint, and to share in the benefits of whatever relief may be obtained under or by virtue of this suit, upon contribution of their pro rata share of the expenses thereof.

9. The legal description of the said property now held and operated in the name of the said Glucose Sugar Refining Company, in the City of Chicago, in the County of Cook, in the State of Illinois, as above shown, is as follows, namely: Block Seventy-eight (78) (except Taylor Street) in School Section Addition to Chicago, in Section Sixteen (16), Township Thirty-nine (39) North, Range Fourteen (14) East of the Third Principal Meridian, in the City and County and State aforesaid.

10. Your orator is informed and believes, and so charges the fact to be, that the said real estate last above described, together with the other properties held in the name of the said Glucose Sugar Refining Company, and the other properties held in other names, as above stated, is now about to be transferred and conveyed to the said Corn Products Refining Company, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, and will be so transferred and conveyed unless the said conspirators, hereinafter made defendants to this Bill of Complaint, be restrained from so doing, or causing the same to be done, by the order of this Court, thereby working irreparable injury to your orator, and to the other stockholders of the said Corn Products Company, not parties to said conspiracy.

11. Your orator further represents that the officers of the said Corn Products Company, are as follows, namely: C. H. Matthiessen, president, C. L. Glass, vice-president, and William W. Heaton, treasurer, and the directors of the said Corn Products Company, are as follows, namely: C. H. Matthies-

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sen, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, William W. Heaton, C. L. Glass, W. T. Gorman, T. B. Waggoner, H. C. Herget, T. P. Kingsford, and F. C. Sherwood and your orator is informed and believes and so charges the fact to be that all the officers and directors of the said Corn Products Company are either parties to the said conspiracy, or so interested with said conspirators that none of them will take any steps to prevent the carrying out of the said conspiracy for the fraudulent purposes aforesaid.

12. Your orator further represents that the said Corn Products Refining Company is a giant pool, and trust, and combine, formed by said conspirators for the purpose of unlawfully regulating and fixing and controlling the price of glucose and grape sugar, and other products, all of which are articles of merchandise and commodities manufactured and sold in this State, and throughout the United States; that the names of the persons forming such pool, trust, and combine, other than those hereinbefore mentioned, are now unknown to your orator, and your orator has not been able, after diligent inquiry, to ascertain the same, but your orator is informed and believes and so charges that all the persons above named, including the said officers and directors of the said Corn Products Company, are parties thereto, or interested therein, together with others unknown to your orator; that said pool, trust and combine is to be accomplished, and carried out, and made effectual for the purposes aforesaid under the forms of the law, namely in and through such incorporation under the name of the said Corn Products Refining Company; that the parties organizing, creating, promoting and managing or interested in the said pool, trust and combine, are now perfecting their arrangements, with the
15 intent and purpose of unlawfully monopolizing, controlling, regulating and fixing the price of glucose and grape sugar and by-products within the State of Illinois, and throughout the United States, and for such fraudulent and unlawful purpose, as well as for the further purpose of defrauding your orator of your orator's said stock and defrauding other holders of the stock of said Corn Products Company similarly situated with your orator, having already arranged to obtain control of substantially all the corporations and individuals heretofore engaged in the manufacture and sale of said commodities throughout the United States, and the said Corn Products Refining Company will, pursuant

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to said conspiracy, and for the fraudulent purposes aforesaid, unlawfully acquire complete control of the said corporations and individuals, and of the manufacture and sale of the said products, throughout the United States, unless restrained from so doing by the order or decree of this Honorable Court; that the purpose and intent of the said pool and combination, and of the said parties forming the same, or interested therein, jointly and severally, is to create a trust in, and a complete monopoly of, the said articles and commodities, and give to the said Corn Products Refining Company, as the embodiment of such trust, and pool, and combine, the power to regulate and fix and absolutely control both the supply and the price of said articles and commodities, in the State of Illinois, and throughout the United States, amounting now in the aggregate to several billions of pounds annually and consuming many millions of bushels of corn, annually; that said pool and trust and combine, and the effect, intent and purpose thereof, and the intent and purpose of the parties forming the same, or interested therein, as aforesaid, is in direct violation of the laws of this State, and in violation of the statutes of this State in and for such case made and provided, and the purpose and plan of the said pool, trust and combine, and of said parties forming the same, or interested therein, is to swallow up and merge in the said Corn Products Refining Company, all the organizations and plants in the United States heretofore engaged or used in the manufacture or sale of said articles and commodities, or any of them, issuing to the said organizations heretofore so engaged stock in the said Corn Products Refining Company to thereby perfect its control of said organization, and, where this method fails, to buy such organizations and plants for cash or its equivalent, and, in any event, to thus merge and swallow up all the said organizations and plants, including the said Corn Products Company, in said pool, trust and combine, thus leaving to your orator, and other stockholders similarly situated, the option only of participating in such unlawful trust, pool and combine, or submitting to the destruction of the stock so held by your orator, and others similarly situated in said Corn Products Company, or the destruction of the value thereof, and your orator charges that the officers and directors, and majority stock holders of the said Glucose Sugar Refining Company, are actively, and knowingly, and unlawfully, aiding and participating and joining in, said trust, pool and combine, and preparing fraudulently and unlawfully

Bill of Complaint filed May 4, 1907.

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to sell and transfer all the plants and properties of the said Glucose Sugar Refining Company to the said Corn Products Refining Company for the unlawful and fraudulent purposes aforesaid, and will so do unless restrained therefrom by the order or decree of this Honorable Court.

13. Your orator further charges that the forming and carrying out of the said pool, trust and combine, in and by the formation and action of the said Corn Products Refining Company, pursuant to said conspiracy, is an unlawfully and fraudulent stock-jobbing scheme, and frenzied finance, upon the part of the said conspirators, for the purpose of fleecing the public, as well as your orator, and others similarly situated, in the devious ways and methods originating in Wall Street, and practiced by financial parrots constituting "the system" by which the public are fleeced and plundered, continually, and by which it is intended by said conspirators to freeze out and defraud your orator as the holder and owner of the said stock in the said Corn Products Refining Company, and other holders of such stock, not parties to such conspiracy, all of which is contrary to equity and good conscience and in violation of the laws of this state, and in violation of the laws of the United States.

14. Your orator further represents that a part and parcel of the plan of said conspirators, in carrying out the said conspiracy, is to dismantel and destroy such of said plants as are now yielding profits applicable to the payment of 17 dividends on the said stock belonging to your orator, and others similarly situated, and build up and operate other plants for the manufacture and sale of said products, from the earnings of which dividends will be paid to said conspirators, exclusively, and not to your orator, or others similarly situated, all of which is pursuant to said conspiracy, and for the fraudulent purposes aforesaid, there being now no occasion for the sale or transfer of any of the plants, controlled, as aforesaid, heretofore, by said Corn Products Company, and from the net earnings of which plants dividends have heretofore been paid, and ought to continue to be paid to the holders of the stock of said Corn Products Company including your orator, and there is now no occasion or excuse for the dismantling, or abandonment, or destruction, of any of the said plants, but it is to the interest of the public and to the interest of your orator, and other stockholders of the said Corn Products Company, including your orator, and other stockholders of the said Corn Products Com-

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pany, that all of the said plants contain a separate existence and business, and carry on the same, without becoming merged and swallowed up in the said Corn Products Refining Company constituting the said pool, trust and combine, as aforesaid, for the manufacture of the said products has already become immensely profitable, and is becoming more profitable every year, and all that prevents such profitable conduct of said business, for the benefit of wour orator, and others interested therein, is the fraudulent conspiracy aforesaid, and the said unlawful action and conduct of the parties thereto, pursuant to the conspiracy aforesaid, and to the end that such fraud may be prevented, your orator is advised and believes and so charges that a receiver should be appointed by this Honorable Court of the said Corn Products Company, and its property, and, particularly, of the said plants held in the name of and operated by the said Glucose Sugar Refining Company, in Chicago, Illinois, and in Peoria, Illinois, and elsewhere, and that said plants be managed and operated by said receiver, under the orders and directions of this Honorable Court, pending the hearing of this cause, and the said conspirators thereby ousted from the possession or control thereof, and a reorganization had of the said Corn Products Company, and of the several corporations here-
18 tofore controlled by said Corn Products Company, under the orders and directions of this Honorable Court, and that said conspirators, including said Corn Products Refining Company be enjoined from making, or causing to be made, any sale, or transfer, or conveyance, of the said properties, or plants, or any or either of them, or any part thereof, to said Corn Products Refining Company, or any other or others of said conspirators.

Bill of Complaint filed May 1907.

15. Your orator further represents and charges that all the acts of the said conspirators above named, or referred to, and of said pool and trust and combine, and of the said parties forming or interested therein, have been and are with the fraudulent intent nad purpose to thereby effect a combination of many millions of dollars of capital, and skill, and firms, and corporations, and individuals, to limit and control the production of glucose, and grape sugar, and other commodities, and regulate, and fix, and control, and change, at the will of said conspirators, the price of the same, and to prevent competitions in the manufacture and sale of such products, all of which is in violation oft he Statute of Illinois, entitled "An Act to Define Trusts and Conspiracies Against Trades,"

Bill of Complaint filed May 4, 1907.

etc., approved June 20, 1893, in force July 1, 1893, and with the fraudulent intent and purpose on the part of said conspirators to regulate and fix and control the price of said commodities, and the supply thereof, the said articles not being articles of merchandise the cost of which is mainly made up in wages, and no part of the purpose or intent or object of the said conspirators, or the effect of their said action, is not and will not be to maintain or increase wages and the said fraudulent and unlawful conduct of said conspirators, is in violation of the Statute of this State, providing for the punishment of persons or corporations forming pools, and with the intent and purpose on their part to place the control of such products in the hands of the said trust, the said Corn Products Refining Company, and thereby control the price and supply and manufacture thereof, in violation of the said Statute of the State of Illinois, and in violation of the common law of the said State, and in violation of the laws of the United States in and for such case made and provided.

19 16. Your orator further represents that the glucose business has grown to enormous proportions in this country, and its products are everywhere in use, and of vast commercial importance, in their varied and manifold uses, and in the carrying on of such business great skill and vast capital are employed and required, and it is for the interest of the public that competition therein be unrestrained and uneffected by such pools and trusts and combines as the said Corn Products Refining Company, it not being an easy matter for persons or corporations to go into and engage in such business, as it requires considerable time and much capital to erect plants for the same, and many of the most important processes are patented and owned or controlled heretofore by the said several corporations above named, other than the said Corn Products Refining Company, and it requires special skill and experienced men to erect and operate such plant, and the supply of such men is limited, and not equal to the public demand, and it will be impossible to compete with the said Corn Products Refining Company in such business, in the State of Illinois, or elsewhere in the United States, unless such conspirators be prevented from carrying out their conspiracy aforesaid, and, if such conspiracy be so carried out, your orator and others similarly situated will be entirely deprived of their said stock and the value thereof entirely destroyed, and the said pool, trust and combine would be

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in complete control of said products throughout the State of Illinois, and throughout the United States, and all competition therein thus prevented.

17. Your orator further represents that said pool, trust and combine, formed under the name of the said Corn Products Refining Company, cannot succeed in its said fraudulent and unlawful purposes unless it secures control of the said plants located in Illinois, and a prevention of its control thereof will prevent the carrying out of the conspiracy aforesaid, as the State of Illinois is the center of the corn belt of the United States, and if free competition be maintained in this State, in the manufacture and sale of such products, the welfare of the entire public will thus be promoted, and the loss of the stock of your orator, and others similarly situated, in the said Corn Products Company, will be, at
20 the same time, thus prevented, and your orator charges that whatever may be the form, or forms, adopted and to be adopted, or pursued, by said conspirators, forming or constituting the said Corn Products Refining Company, the substance and effect thereof is and will remain a united control of the plants and corporations of this country engaged in the manufacture or sale, of said products, by and in the name of the said Corn Products Refining Company; and the formation and operation of the said Corn Products Refining Company, by said conspirators, is simply a mode of union, after the manner of the Standard Oil Company, constituting a giant monopoly for the purpose of controlling, fixing, and regulating, both the supply and the price, of glucose, and its varied by-products, syrups and sugar, throughout the State of Illinois, and throughout the United States.

21 To the end therefore, that your orator may have a remedy and equity in the premises, and that the said Corn Products Company, and the said Corn Products Refining Company, and the said Glucose Sugar Refining Company, the said New York Glucose Company, and the said C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. T. Gorman, T. B. Waggoner, H. C. Herget, T. P. Kingsford, F. C. Sherwood, and said E. T. Bedford, and J. B. Greenhut, all of whom are hereby made parties defendant to this Bill of Complaint, may be duly summoned to answer the same (but not under oath, the oath to their respective answers being hereby expressly waived); and to the end that a receiver may be appointed to the properties and affairs of the said cor-

Bill of Complaint filed Mar. 4, 1907.

porations respectively; and to the end that said defendan and every of them, respectively, and their respecti attorneys, agents, and servants, may be enjoined fro doing or performing any of the unlawful acts abo complained of by your orator, and, particularly, fro selling or conveying, or causing to be sold or co veyed, to the said Corn Products Refining Compan any of the property now standing in the name of the sai Glucose Sugar Refining Company, including the said rea estate situated in the State of Illinois; and to the end tha there may be a reorganization of the said Corn Product Company, and the said Glucose Sugar Refining Company under the direction of this Honorable Court; and to the en that your orator may have such other and further or dif ferent relief, in the premises, as equity may require, you orator prays that a writ of summons in due form be issue by the clerk of this court directed to the Sheriff of the sai County of Cook, commanding the said Sheriff that he sum mon the said defendants, the said Corn Products Company and the said Corn Products Refining Company, and the said Glucose Sugar Refining Company, the said New York Glucose Company, and the said C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Cal houn, Joy Morton, W. T. Gorman, T. B. Waggoner, H. C Herget, T. P. Kingsford, F. C. Sherwood, and said E. T. Bedford, and J. B. Greenhut to be and appear before this
22 Honorable Court at the term thereof to be begun and held on the 3rd Monday of May, A. D. 1907, in the City of Chicago, in the County of Cook, in the State of Illinois, to then and there answer this Bill of Complaint, as aforesaid, and abide by and perform the orders and decree of this Court in this cause; and your orator will ever pray, etc.

CHICAGO REAL ESTATE LOAN & TRUST COMPANY.
By A. B. JOYNER,
Its Solicitor.

A. B. JOYNER,
Solicitor for Complainant.

23 Thereupon on the same day to-wit, on the 4th day of May, A. D. 1907, a certain People's Writ of Summons issued out of the office of the clerk of said Court and under the seal thereof, directed to the sheriff of Cook County to execute which writ together with the return of the sheriff thereon endorsed are in words and figurs following to-wit: Chancery Summons, issued May 4, 1907.

CHANCERY SUMMONS.

Circuit Court.

State of Illinois, }
County of Cook. } ss.

The People of the State of Illinois, to the Sheriff of said County, Greeting:

We command you that you summon Corn Products Company, a corporation, Corn Products Refining Company, a corporation, The Glucose Sugar Refining Company, a corporation, New York Glucose Company, C. H. Mattheson, C. L. Glass, William W. Heaton, E. A. Matthesen, Norman B. Ream, W. J. Calhoun, Joy Morton, E. T. Gorman, T. B. Waggoner, H. C. Herget, T. P. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut, if they shall be found in your county, personally to be and appear before the Circuit Court of Cook County, on the first day of the term thereof, to be holden at the place now provided by law for the holding of said Court in Chicago, in said County, on the third Monday of May, A. D. 1907, to answer unto the Chicago Real Estate Loan & Trust Company in its certain bill of complaint filed in said Court, on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, Joseph E. Bidwill, Jr., Clerk of said Court, and the seal thereof, at Chicago, in said County, this 4 day of May, A. D. 1907.

(Seal) Joseph E. Bidwill, Jr.,
Clerk.

24 Pd. 13.00
M. 1.00

Served this writ on the within named defendant, Joy Morton, by delivering a copy thereof to him this 6th day of May, 1907, also served this writ on the within named defendant, Sheriff's return to summons.

Sheriff's return to summons.

C. L. Glass, by delivering a copy thereof to him on the 7th day of May, 1907, also served this writ on the within named The Glucose Sugar Refining Company, a corporation, by delivering a copy thereof to G. W. Powers, president of said corporation this 7th day of May, 1907.

CHRISTOPHER STRASSHEIM,
Sheriff.
By L. A. BRUNDAGE,
Deputy.

Served this writ on the within named defendant, W. J. Calhoun, by delivering a copy thereof to him this 7th day of May, 1907. The other within named defendants not found in my county.

CHRISTOPHER STRASSHEIM,
Sheriff.
By THOS. W. SENNOTT,
Deputy.

Appearance, filed May 22, 1907.

And afterwards to-wit: on the 22nd day of May, A. D. 1907, a certain appearance was filed in the office of the clerk of said Court, in words and figures following to-wit:

State of Illinois, }
County of Cook. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY.

Chicago Real Estate Loan & Trust Company, a corporation, *vs.* Corn Products Company, a corporation, *et al.*	Gen. No. 279,135. Term No. 21,155.

We hereby enter the appearance of Joy Morton, C. L. Glass, W. J. Calhoun and Glucose Sugar Refining Company, a corporation, four of the defendants in the above entitled cause, and that of ourselves as their solicitors.

JAMES M. SHEEAN,
MORAN, MAYER & MEYER,
Solicitors for said Defendants.

And afterwards, to-wit, on the 7th day of June, A. D. 1907, a certain Notice was filed in the office of the clerk of said court, in words and figures following to-wit: Notice filed June 7, 1907.

State of Illinois, }
County of Cook. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY.

In Chancery.

Chicago Real Estate Loan & Trust Company, *Complainant.* *vs.* Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. P. Kingsford, F. C. Sherwood, E. T. Bedford, and J. B. Greenhut, *Defendants.*	Gen. No. 279,135. Term No. 21,155.

To A. B. Joyner, Solicitor for complainant.

Please take notice that on Thursday, the 6th day of June, A. D. 1907, at the hour of 10 A. M., or as soon thereafter as counsel can be heard, before his Honor Judge Honore, in the court room usually occupied by him, we shall present the petition of Corn Products Manufacturing Co., praying for a removal of the above entitled cause to the United States Circuit Court, in and for the Northern District of Illinois,
26 Eastern Division thereof, a copy of which petition is herewith served upon you; at which time and place you may appear if you see fit.

JAMES M. SHEEAN, and
MORAN, MAYER & MEYER,
Solicitors for Corn Products Manufacturing Co.

Received a copy of the above and foregoing notice this 5th day of June, A. D. 1907.

A. B. JOYNER,
Solicitor for Complainant.

Petition for removal filed June 7, 1907.

And afterwards to-wit: on the 7th day of June, A. D. 1907, a certain petition and bond for removal was filed in the office of the clerk of said Court, in words and figures following to-wit:

27 State of Illinois, }
County of Cook. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY.

In Chancery.

Chicago Real Estate Loan & Trust Company,
Complainant,
vs.
Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. P. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut,
Defendants.

Gen. No. 279,135.
Term No. 21,155.

PETITION FOR REMOVAL TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION THEREOF.

To the Honorable Judges of said Circuit Court of Cook County. In Chancery Sitting:

Your petitioner, Corn Products Manufacturing Co., respectfully shows unto your honors:

1. That this petitioner is a defendant sued in the above entitled cause under the name and style of Glucose Sugar Refining Company; that said Glucose Sugar Refining Com-

pany is a corporation organized and existing under the Petition for re-
28 laws of the State of New Jersey; that long prior to the moval filed June 7, 19
commencement of this suit the name of said Glucose Sugar Refining Company was duly changed according to law to Corn Products Manufacturing Co., and a certificate of such change of name was duly filed in the office of the Secretary of State of the State of New Jersey, in accordance with the statutes of such State in such case made and provided.

2. Your petitioner further shows that at the time of the commencement of this suit the said complainant, Chicago Real Estate, Loan & Trust Company, was and continuously since has been, and now is, a corporation organized and existing under the laws of the State of Illinois, and a citizen of said State of Illinois, and a citizen of no other state or country, and at the time of the commencement of this suit was and continuously since has been, and now is, a resident of the City of Chicago in said State of Illinois.

3. That your petitioner, Corn Products Manufacturing Co., a defendant in this suit was at the time of the commencement of this suit and continuously since has been, and now is a corporation organized and existing under the laws of the State of New Jersey, and a citizen of the State of New Jersey, and of no other state or country, and at the time of the commencement of this suit your petitioner, Corn Products Manufacturing Co., was and continuously since has been, and now is, a resident of said State of New Jersey, having its principal office in the City of New Jersey in said State of New Jersey.

4. That said Corn Products Company, Corn Products
29 Refining Company and New York Glucose Company, defendants in his suit, were at the time of the commencement of this suit, and continuously since have been, and now are, corporations organized and existing under the laws of the State of New Jersey, and citizens of the State of New Jersey, and of no other state or country, and at the time of the commencement of this suit said defendants, Corn Products Company, Corn Products Refining Company and New York Glucose Company, were, and continuously since have been, and now are, residents of said State of New Jersey, having their principal offices in the City of Jersey City in said State of New Jersey.

That C. H. Matthiessen, William W. Heaton and T. P. Kingsford, defendants in this suit, were at the time of the

Petition for removal, filed June 7, 1907.

commencement of this suit, continually have been, and now are respectively citizens of the State of New York and residents of the State of New York.

That C. L. Glass, W. J. Calhoun, Joy Morton, W. J. Gorman, (sued herein as W. T. Gorman), T. B. Wagner (sued herein as T. B. Waggoner), H. G. Herget (sued herein as H. C. Herget) and J. B. Greenhut, defendants in this suit, were at the time of the commencement of this suit, and still are, respectively, citizens of the State of Illinois, and residents of the State of Illinois.

That E. T. Bedford and Norman B. Ream, defendants in this suit, were at the time of the commencement of this suit and still are, respectively, citizens of the State of Connecticut, and residents of the State of Connecticut.

That W. C. Sherwood (sued herein as F. C. Sherwood), a defendant in this suit, was at the time of the commencement of this suit, and still is a citizen of the State of New Jersey and a resident of the State of New Jersey.

That E. A. Matthiessen, a defendant in this suit, departed this life long prior to the time of the commencement of this suit; that at the time of his death E. A. Matthiessen was a citizen of the State of New York, and a resident of the State of New York.

5. Your petitioner further shows that neither said Norman B. Ream, W. J. Gorman, H. G. Herget nor J. B. Greenhut, defendants herein, respectively, were at the time of the filing of the bill of complaint herein, nor at any time since, and are not now, directors or officers of your petitioner, Corn Products Manufacturing Co., nor directors or officers of any of said defendants, Corn Products Company, Corn Products Refining Company, or said New York Glucose Company, and said defendant, T. P. Kingsford, was not at the time of the filing of the bill of complaint herein, nor at any time since, and is not now, a director or officer of your petitioner Corn Products Manufacturing Co., nor of said Corn Products Company, nor of said New York Glucose Company. Your petitioner further says that none of the defendants in said cause other than your petitioner and C. L. Glass, W. J. Calhoun and Joy Morton, have appeared in said cause or been served with process therein.

6. Your petitioner further shows that there is in this suit a controversy which is wholly between citizens of different states, and which may be fully determined as between them, and that said controversy is between your petitioner, Corn

Products Manufacturing Co., on the one part, and the complainant, Chicago Real Estate Loan & Trust Company, on the other part, and is as follows: Petition for removal, filed June 7, 190

(a) A controversy as to whether or not the property of your petitioner, Corn Products Manufacturing Co., is operated and managed for the sole benefit of the stockholders of the said Corn Products Company and under the direction and control of the said Corn Products Company.

31 (b) A controversy as to whether the complainant, Chicago Real Estate Loan & Trust Company can obtain a decree enjoining your petitioner, Corn Products Manufacturing Co., from transferring and conveying the real estate, properties, business and plants of your petitioner, referred to in said bill, to said Corn Products Refining Company.

(c) A controversy as to whether or not the real estate, properties, business and plants of your petitioner referred to in said bill, are about to be transferred and conveyed to said Corn Products Refining Company, pursuant to a conspiracy to cheat and defraud said complainant, Chicago Real Estate Loan & Trust Company, by destroying the market value of the stock of said Corn Products Company, held by said complainant, Chicago Real Estate Loan & Trust Company, or are about to be transferred or conveyed at all either in whole or in part.

(d) A controversy as to the validity and legality of the proposed transfer of the real estate, properties, business and plants of your petitioner to said Corn Products Refining Company.

(e) A controversy as to whether the transfer of the real estate, properties, business and plants of your petitioner to said Corn Products Refining Company is for the purpose of unlawfully regulating, fixing and controlling the price of glucose, grape sugar and other products.

(f) A controversy as to whether the transfer of the real estate properties, business and plants of your petitioner to said Corn Products Refining Company is with the intent and purpose of unlawfully monopolizing, controlling, regulating and fixing, the price of glucose and grape sugar and by-products within the State of Illinois and throughout the United States.

(g) A controversy as to whether the purpose and intent of the transfer of the real estate, properties, business and

32 plants of your petitioner to said Corn Products Refining Company is to create a trust in, and a complete monopoly

Petition for removal, filed June 7, 1907.

of, the manufacture and sale of glucose and grape sugar and by-products within the State of Illinois and throughout the United States.

(h) A controversy as to whether the transfer of the real estate, properties, business and plants of your petitioner to said Corn Products Refining Company is for the purpose of regulating, fixing and controlling the supply and price of glucose and grape sugar and by-products in the State of Illinois and throughout the United States.

(i) A controversy as to whether the transfer of the real estate properties and plants of your petitioner to said Corn Products Refining Company is violative of the law and statutes of the State of Illinois.

(j) A controversy as to whether the transfer and sale of the real estate, properties, business, and plants of your petitioner to said Corn Products Refining Company is in violation of the common law.

(k) A controversy as to whether the transfer of the real estate, properties and plants of your petitioner to said Corn Products Refining Company is in violation of the laws of the United States.

(l) A controversy as to whether the officers, directors and majority stockholders of your petitioner are actively and knowingly and unlawfully aiding and participating and joining in a trust pool and combine to sell and transfer all the real etsate, plants, business and properties of your petitioner to said Corn Products Refining Company.

(m) A controversy as to whether or not the transfer by your petitioner of its real estate, properties, business and plants to said Corn Products Refining Company is violative of the statute of the United States, entitled "An Act to
33 protect trade and commerce against unlawful restraints and monopolies."

(n) A controversy as to whether or not there is any necessity or occasion for the sale or transfer of any of the plants of your petitioner to said Corn Products Refining Company.

(o) A controversy as to whether the complainant, Chicago Real Estate Loan & Trust Company, is entitled to have a receiver appointed for all the plants and properties of your petitioner in the State of Illinois and elsewhere.

(p) A controversy as to whether the complainant, Chicago Real Estate Loan & Trust Company, is entitled to a decree

that the plants of your petitioner be managed and operated by a receiver under the orders and directions of the court. Petition for removal, filed June 7, 1907.

(q) A controversy as to whether the complainant, Chicago Real Estate Loan & Trust Company is entitled to a decree that a re-organization be had of your petitioner under the orders and directions of this court.

(r) A controversy as to whether the complainant, Chicago Real Estate Loan & Trust Company is entitled to a decree that your petitioner be enjoined from making or causing to be made, any sale or transfer or conveyance of the properties or plants of your petitioner, or any or either of them, or any part thereof, to said Corn Products Refining Company, or to any other party or parties defendant to said bill of complaint.

(s) A controversy as to the right of the complainant, Chicago Real Estate Loan & Trust Company, to have any relief whatever sought or prayed for in said bill as against your petitioner.

(t) A controversy as to the right of the complainant, 34 Chicago Real Estate Loan & Trust Company, to a judgment or decree of any kind against your petitioner.

7. Your petitioner further shows that each of the said several controversies above stated is a separable controversy wholly between citizens of different states, namely, between your petitioner, Corn Products Manufacturing Co., on the one side and said complainant Chicago Real Estate Loan & Trust Company on the other side; and that each and all of said controversies can be fully determined between your petitioner, the said Corn Products Manufacturing Co., and the said complainant, Chicago Real Estate Loan & Trust Company, and that the other defendants, Corn Products Company, Corn Products Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. P. Kingsford, W. C. Sherwood, E. T. Bedford and J. B. Greenhut are not, nor are any or either of them a proper or necessary party to the determination of all or any or either of said controversies.

8. Your petitioner shows that the complainant Chicago Real Estate Loan & Trust Company charges in its bill of complaint herein that the proposed transfer by your petitioner of its real estate, properties, business and plants to said Corn Products Refining Company, complained of in said

Petition for removal, filed June 7, 1907.

bill and evidenced by the alleged acts in said bill set forth, are illegal and in violation of the laws of the United States; and your petitioner avers and states the fact to be that the alleged proposed transfer of the said real estate, properties, business and plants of your petitioner to said Corn
35 Products Refining Company is legal and valid, and in no way contravenes the constitution of the United States or any provision thereof or amendment thereto, or any law or statute of the United States and said proposed alleged transfer is in every respect valid, legal and binding and constitutional; that this suit is one arising under the constitution or laws of the United States; that this suit involves the question whether or not the alleged proposed transfer by your petitioner of its real estate, properties, business and plants to said Corn Products Refining Company as set forth in said bill, is in violation of the constitution of the United States or any provision thereof or amendment thereto, or in violation of any statute or law of the United States, and the settlement of said question is essential to the determination of said cause.

9. Your petitioner further shows that the complainant Chicago Real Estate Loan & Trust Company charges in its bill of complaint herein that the proposed transfer by your petitioner of its real estate, properties, business and plants to said Corn Products Refining Company is for the purpose of fraudulently and unlawfully acquiring complete control of the manufacture and sale of glucose grape sugar and by-products throughout the United States, and to create a trust in and a complete monopoly in said articles and commodities, and to give to the said Corn Products Refining Company the power to regulate and fix and absolutely control both the supply and the price of said articles and commodities throughout the United States, all of which is alleged and averred in said bill of complaint to be in violation of the laws of the United States; and your petitioner avers and states the fact to be that each and all of the alleged acts and alleged transactions complained of in said bill are in every respect valid, legal and binding and constitutional, and do not contravene or violate the constitution of the United States or any
36 provision thereof or amendment thereto, and in no way contravene or violate any statute or law of the United States; that this suit is one arising under the constitution or laws of the United States; that his suit involves the question whether or not said acts, doings and transactions set

forth in said bill of complaint, or any of them, violate, infringe or contravene the constitution of the United States, or any statute or law thereof, and the settlement of said question is essential to the determination of said cause.

Petition for removal, filed June 7, 1907.

10. Your petitioner further shows that the complainant, Chicago Real Estate Loan & Trust Company charges in its bill of complaint herein that said Corn Products Refining Company is engaged in trade and commerce within the State of Illinois, and among and between the several states of the United States, and manufactures and sells glucose and grape sugar and by-products throughout the United States, and in and among and between the several states, and that said Corn Products Refining Company has an absolute monopoly of the business and commerce of manufacturing, selling and dealing in glucose, grape sugar and by-products in the United States, and in and among and between the several states, and that said Corn Products Refining Company was organized for the purpose of unlawfully monopolizing the said trade and commerce in the State of Illinois, and in, among and between the several states, and to restrain and restrict the output and control the price thereof, and that said Corn Products Refining Company was organized with the intent and for the purpose of unlawfully monopolizing, controlling, regulating and fixing the price of glucose and grape sugar and by-products throughout the United States, and that the
37 parties defendant to said bill have already arranged to obtain control of substantially all the corporations and individuals theretofore engaged in the manufacture and sale of said commodities throughout the United States, and that said Corn Products Refining Company will unlawfully acquire complete control of the said corporations and individuals and of the manufacture and sale of the said products throughout the United States, and that the purpose and intent of the said pool and combination is to create a trust in and a complete monopoly of the said articles and commodities, and to give to said Corn Products Refining Company the power to regulate and fix and absolutely control both the supply and the price of said articles and commodities in the State of Illinois, and throughout the United States, and that the said pool, trust and combine and the effect, intent and purpose thereof, and the intent and purpose of the parties forming the same, is in direct violation of the laws and statutes of the United States.

Petition for removal, filed June 7, 1907.

Your petitioner avers that the law and statute of the United States referred to in said bill of complaint is an act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" that said complainant claims and contends that the transactions referred to in said bill are wholly void because they contravene and are in violation of said statute, and your petitioner avers and states the fact to be that each and every of the acts, doings and transactions complained of in said bill of complaint against your petitioner, Corn Products Manufacturing Company, and said other defendants, was and is in all respects legal and valid and constitutional, and never contravened or violated, and in no
38 way contravenes or violates the said statute of the United States entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," or any other statute or law of the United States; that this suit is one arising under the constitution or laws of the United States; that this suit involves the question whether or not said acts, doings, transaction or transactions or any or either of them, violate, infringe contravene said statute of the United States entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the settlement of said question is essential to the determination of said cause.

11. Your petitioner further shows that the complainant, Chicago Real Estate Loan & Trust Company charges in its bill of complaint herein that the proposed alleged transfer and sale of the real estate, properties, business and plants of your petitioner to said Corn Products Refining Company, complained of in said bill, and the alleged conspiracy to form a pool, trust and combine for the purpose of unlawfully monopolizing, regulating, fixing and controlling the price and quantity of glucose and grape sugar and by-products within the State of Illinois, and for the purpose of acquiring complete control of the manufacture and sale of the said products throughout the United States, and for the purpose of creating a trust in and a complete monopoly of the said articles and commodities and to give to said Corn Products Refining Company the power to regulate and fix, and absolutely control both the quantity and price of said articles and commodities in the State of Illinois, and throughout the United States,
39 are in violation of an act passed by the Legislature of the State of Illinois, entitled "An Act to define trusts and conspiracies against trade," etc., approved June 20, 1893, in

Petition for removal, filed June 7, 1907.

force July 1, 1893; that said bill of complaint relies upon the validity of said Act of June 20, 1893, and complainant's right of recovery depends upon the validity of the same and said complainant asserts the validity of said act in his bill of complaint; and your petitioner avers and states the fact to be that said Act of June 20, 1893, is unconstitutional and void and contravenes the Fourteenth amendment to the constitution of the United States, which provides that:—

"No state shall deprive any person of life, liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of the laws;"

that each and every of the alleged acts, doings and transactions complained of in said bill are in every respect valid, legal and binding, and constitutional, and never contravened or violated and in no way contravene or violate ay statute or law of the United States, or of the State of Illinois; that this suit is one arising under the constitution or laws of the United States; that this suit involves the question whether or not said act of the Legislature of the State of Illinois entitled "An Act to define trusts and conspiracies against trade," etc., approved June 20, 1893, in force July 1, 1893, contravenes said Fourteenth Amendment of the Constitution of the United States; and the settlement of said question is essential to the determination of said cause. That the matter in dispute and the amount involved in said controversy exceeds exclusive of interest & costs the sum or value of five thousand dollars.

12. Your petitioner further shows that it has made and filed and offers herewith its bond executed by your petitioner as principal and by National Surety Company, as surety, in the penal sum of One Thousand ($1000) dollars conditioned for your petitioner entering in the Circuit Court of the United States, in and for the Northern District of Illinois, Eastern Division thereof, on the first day of the next Session thereof, a copy of the record of this suit, and also conditioned for the paying of all costs that may be awarded by the said Circuit Court of the United States, if said court shall hold that this said suit was wrongfully or improperly removed thereto, and in all respects conditioned as required by the Act of Congress in that behalf.

Your petitioner therefore prays this Honorable Court that said bond may be accepted as good and sufficient, and that this Honorable Court will make its order for the removal of the said cause into the Circuit Court of the United States to

Petition for removal, filed June 7, 1907.

be held in and for the Northern District of Illinois, Eastern Division thereof, pursuant to the statutes of the United States in said case made and provided, and will direct the record herein to be removed into said Circuit Court of the United States, and that no further proceedings may be had in said cause in this court.

And your petitioner will ever pray.

CORN PRODUCTS MANUFACTURING CO.
By G W POWERS
President.

(Corporate Seal)
Attest
P H MURPHY
Asst Secy.

MORAN MAYER & MEYER
J M SHEEAN
Solicitors for Corn Products Manufacturing Co.

Affidavit of G. W. Powers.

41 State of Illinois }
County of Cook } ss.

G. W. Powers, being first duly sworn, upon oath deposes and says that he is the President of Corn Products Manufacturing Co., the above named petitioner; that he has read the above and foregoing petition subscribed by affiant as President of said petitioner; and attested by P H Murphy, Assistant Secretary; that he is the duly authorized agent of said Corn Products Manufacturing Co., in this behalf, that he knows the contents of said petition; that the said petition is true to the best of his knowledge, information and belief; that he makes this affidavit for and on behalf of the said Corn Products Manufacturing Co., and has full and due authority to make the same.

G W POWERS

Subscribed and sworn to before me, a Notary Public, in and for the County of Cook and State of Illinois, this fifth day of June, A. D. 1907.

FRANCIS E MATTHEWS
Notary Public.

(Notarial Seal)

State of Illinois }
County of Cook. } ss.

Affidavit of C. L. Glass et al.

IN THE CIRCUIT COURT OF COOK COUNTY,

In Chancery.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. P. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut, *Defendants.*	Gen. No. 279,135. Term No. 21,155.

Now come C. L. Glass, W. J. Calhoun and Joy Morton, by Moran, Mayer and Meyer and James M. Sheean, their solicitors, and unite in the foregoing petition of Corn Products Manufacturing Co., and say that the allegations therein contained are true and petition and consent that an order may be entered in the above entitled cause transferring said cause to the Circuit Court of the United States for the Northern District of Illinois, Eastern Division thereof, in accordance with the prayer of the petition of said Corn Products Manufacturing Co., one of the defendants in said cause, for the removal of said cause.

C. L. GLASS
W. J. CALHOUN and
JOY MORTON
J M SHEEAN and
By MORAN MAYER & MEYER
Their Solicitors.

Bond for removal, filed June 7, 1907.

said suit, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and effect.

45 In Witness Whereof, the said Corn Products Manufacturing Co. has caused these presents to be executed by its president and attested by its assistant secretary, under its corporate seal, and the said National Surety Company has caused these presents to be executed by its attorney in fact, and attested by its secretary, under its corporate seal this 5th day of June, A. D. 1907.

CORN PRODUCTS MANUFACTURING CO.
By G. W. POWERS,
President.

(Corporate Seal)

NATIONAL SURETY COMPANY,
By CHARLES S. CRAIN,

Attest:
P. H. MURPHY,
Assistant Secretary.

Attest:
ALFRED L. FRASER,
Resident Assistant Secretary.
(Corporate Seal)

Certificate of Notary public.

State of Illinois, }
County of Cook, } ss.

On this 5th day of June, A. D. 1907, before me came George W. Powers, personally known to me, and known to me to be the President of the Corn Products Manufacturing Co., a corporation described in and which executed the foregoing instrument, who being by me duly sworn, did depose and say that he resides in the city of Chicago, and State of Illinois, that he is the president of the Corn Products Manufacturing Co., and knows the corporate seal of said company; that the seal affixed to the foregoing instrument is the corporate seal of the said company and was affixed thereto by authority of said company, and that he signed his name thereto as president by like authority, and the said George W. Powers acknowledged before me that he signed and executed said instrument as and for the act and deed of said Corn Products

Manufacturing Co., for the uses and purposes therein expressed. Certificate of notary public.

46 In Witness Whereof, I have hereunto set my hand and affixed my motarial seal at the city of Chicago, County of Cook and State of Illinois, this 5th day of June, A. D. 1907.

FRANCIS E. MATTHIESSEN,
(Notarial Seal.) *Notary Public in and for Cook County, Illinois.*

And thereupon on the same day to-wit: on the 7th day of June, A. D. 1907, the following proceedings were had and entered of record in said court, to-wit: Order of June 7, 1907.

State of Illinois, }
County of Cook. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY

In Chancery.

Chicago Real Estate Loan and Trust Company,
vs.
Corn Products Company,
279135
21155

ORDER.

This cause coming on upon the presentation on the part of the Corn Products Manufacturing Company of a petition and bond for the removal of this cause into the United States Circuit Court, and upon the motion of said petitioner that said petition and bond be accepted.

It is Ordered by the court upon its own motion that to enable the court to consider the legal questions involved, a ruling upon the said motion shall be postponed, and that the time in which all of the defendants would be required by the law and the rules of court to plead, answer or demur be extended indefinitely and until twenty days after the ruling of the court upon the said motion to accept said petition and bond has been entered herein.

Certificate of clerk.

47 State of Illinois, }
County of Cook. } ss.

I, Joseph E. Bidwill, Jr. Clerk of the Circuit Court of Cook County, and the keeper of the records and files thereof in the state aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the record in a certain cause lately pending in said Court, on the Chancery side thereof between Chicago Real Estate Loan and Trust Co., (a Corp.) complainant and Corn Products Company, a corp. et al defendants.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County this 7th day of June, 1907.

JOSEPH E. BIDWILL, JR.
(Seal) *Clerk.*

(Endorsed) Filed June 8, 1907, H. S. Stoddard, Clerk.

48 And on to-wit: the fourteenth day of June, 1907, come Joy Morton by his solicitor and filed in the clerk's office of said Court his certain Answer to the Bill of Complaint in words and figures following to-wit:

49 ANSWER OF JOY MORTON TO BILL OF COMPLAINT.

Answer of Joy Morton to bill of Complaint, filed June 14, 1907.

United States of America,
Northern District of Illinois,
Eastern Division thereof } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES

In and For the Northern District of Illinois,

Eastern Division.

Chicago Real Estate Loan & Trust Company,
Complainant,
vs.
Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. P. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut,
Defendants. } No. 28,695.

Answer of said Defendant, Joy Morton, to the Bill of Complaint of Chicago Real Estate Loan & Trust Company, Complainant.

This defendant, saving and reserving unto himself all manner of benefit or exceptions which can or may be had or taken to the many errors, uncertainties and other imperfections, in said bill of complaint contained, for answer thereunto, or to so much and such parts thereof as he is advised it is or are material or necessary for him to make answer thereunto, answering says:

1. This defendant denies, and prays for strict proof of each and every of the allegations in said bill of complaint contained, excepting only such as are herein specifically admitted to be true,

Answer of Joy Morton to bill of complaint, filed June 14, 1907.

2. This defendant says that said complainant never had and has not now any power, right, or authority to acquire, own, hold, vote or possess any of the said shares of stock of said Corn Products Company alleged in said bill of com-
50 plaint to be owned by said complainant, and that such ownership of any such stock by said complainant always was and is wholly ultra vires, and beyond the corporate powers of said complainant.

3. This defendant denies that said defendants, Glucose Sugar Refining Company, the correct name of which is Corn Products Manufacturing Co., Corn Products Company, Corn Products Refining Company, and New York Glucose Company, or any or either thereof, ever was, or is controlled by, or in the manner alleged in said bill of complaint; but this defendant says that each of said named corporations always was and still is managed and controlled by their respective boards of directors, and solely and only for the purposes for which the said corporations were severally incorporated, and not in any way or manner for any illegal or fraudulent purpose, or for the purpose of defrauding complainant, or of interfering with or lessening the value of its stock in said Corn Products Company, or for the purpose of being of establishing or creating any pool, trust, combine or monopoly, or for any of the wrongful, fraudulent or illegal purposes whatsoever alleged in said bill of complaint; an this defendant denies that any of said named corporations, or any of their officers or directors, or any of the defendants herein, ever conspired together for the purpose of establishing or creating any pool, trust or illegal monopoly as alleged in said bill of complaint, or otherwise.

4. This defendant says that neither he nor any of his co-defendants herein, ever intended to, attempted, threatened, conspired, was or is about to transfer or divert from said Corn Products Company, or from said Glucose Sugar Refining Company, to any other person or corporation, as alleged in said bill of complaint, any of the business, property, plants, trade secrets, or assets of said Corn Products Company, or of said Glucose Sugar Refining Company.

5. This defendant admits that he is a director of said Corn Products Company, and says that he has been such di-
51 rector and also a stockholder in said Company for a long time past, and that said Company is a New Jersey corporation, with an authorized capital stock of fifty millions

Answer of Joy Morton to bill of complaint, filed June 14, 1907.

common and thirty millions preferred stock, but he denies each and every of the allegations in said bill of complaint to the effect that as such director he is or was a party to the conspiracy alleged in said bill, or interested with any of the alleged conspirators in the manner alleged in said bill or otherwise.

6. This defendant denies each and every allegation contained in said bill of complaint respecting any conspiracy or fraudulent scheme to form or organize any pool, trust or combine, or to conduct any business illegally, or to effect the value of complainant's said stock, or the payment of dividends thereon, or in any manner to defraud complainant; and this defendant expressly denies each and every allegation and innuendo contained in said bill of complaint whereby he is charged with any wrong doing.

7. This defendant further denies each and every allegation contained in said bill of complaint, charging any act or attempted act in violation of any of the laws of the State of Illinois, and he says that "An Act to define trusts and conspiracies against trade," etc., approved June 20, 1893, in force July 1, 1893, is contrary to the Constitution and laws of the State of Illinois, and to the Constitution of the United States of America and the Amendments thereto, particularly the Fourteenth Amendment thereto, and is unconstitutional and void.

8. And this defendant says that said complainant has not in and by its said bill of complaint made or shown any such cause of action as entitles it to any of the relief therein prayed for, and is wholly without equity, and this defendant prays the same benefit and advantage of said objection as if it had for that reason demurred to said bill of complaint.

9. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by
52 the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed

with his reasonable costs and charges in this behalf most wrongfully sustained.

JOY MORTON
By MORAN, MAYER & MEYER and
JAMES M. SHEEAN,
His Solicitors.

MORAN, MAYER & MEYER &
JAMES M. SHEEAN,
Soltrs. & of Counsel for said Deft.

(Endorsed) Filed Jun 14, 1907, H. S. Stoddard, Clerk.

Order of June 14, 1907.

53 And on to-wit: the fourteenth day of June, 1907, being one of the days of the regular December term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

ORDER OF JUNE 14, 1907, LEAVE GIVEN JOY MORTON TO FILE CROSS-BILL.

Chicago Real Estate Loan and Trust Company *vs.* Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Hergert, T. P. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut,	28695

Upon motion of Joy Morton, one of the defendants herein, his answer having this day been filed herein, it is hereby ordered that leave be and the same hereby is given said defendant, Joy Morton, to forthwith file a cross-bill herein; and

It is further hereby Ordered that a subpoena issue out of the office of the clerk of this Court, directed to the Marshal of said District, requiring him to subpoena Chicago Real Estate Loan and Trust Company, a corporation, and Corn Products Company, a corporation, to appear herein and answer said cross-bill, on the first day of the next term hereof.

54 And on to-wit: the fourteenth day of June, 1907, come Joy Morton by his solicitor and by leave of Court first had and obtained filed in the clerk's office of said Court his certain cross-bill in words and figures following to-wit: Cross-bill of Joy Morton, filed June 14, 1907.

55 CROSS-BILL OF JOY MORTON.

United States of America,
Northern District of Illinois } ss.
Eastern Division Thereof.

IN THE CIRCUIT COURT OF THE UNITED STATES

In and For the Northern District of Illinois,
Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. B. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut, *Defendants.*	Original Bill Number 28695.
Joy Morton, *Cross-complainant,* *vs.* Chicago Real Estate Loan & Trust Company and Corn Products Company, *Cross-defendants.*	Cross-Bill.

To the Honorable Judges of Said Court, In Chancery Sitting:

Your orator, Joy Morton, respectfully represents unto your Honors that he is a resident of the City of Chicago, in the

Cross-bill of Joy Morton, filed June 14, 1907.

State of Illinois, and a citizen of said State of Illinois, and is one of the defendants in the bill filed in the Circuit Court of Cook County, Illinois, by Chicago Real Estate Loan & Trust Company, which is a corporation organized and existing under and by virtue of the laws of the State of Illi-
56 nois; that in said bill, Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Co. and New York Glucose Company, each and all of which are corporations organized and existing under and by virtue of the laws of the State of New Jersey, were made co-defendants; that C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, W. H. Gorman, R. B. Waggoner, H. C. Herget, T. P. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut, were also made co-defendants in said bill of complaint with your orator.

That in said bill it is, among other things alleged, that the said complainant, Chicago Real Estate Loan & Trust Company, on or about the 6th day of February, A. D. 1902, became the owner and holder of 1000 shares of the capital stock of the said Corn Products Company of the par value of $100. each, 450 of the said 1000 shares being preferred stock and 550 thereof being common stock of the said company.

And it is further in said bill alleged that at the time said complainant acquired said stock, and for a considerable period theretofore, and for some time thereafter, said Corn Products Company held and owned a controlling interest in a number of large and valuable factories in the State of Illinois, and elsewhere, then and theretofore used in the manufacture of glucose and other marketable products, which business was then and theretofore yielding large profits to all the stockholders of the said Corn Products Company by way of dividends.

And in and by said bill it is also alleged that the legal title to the properties referred to, was and is in the name of the said Glucose Sugar Refining Company, and that the same was operated and managed for the sole benefit and under the direction and control of the said Corn Products Company.

And in and by said bill it is also alleged, that the said Corn Products Company held and owned a controlling interest in other factories in Illinois and elsewhere, operated and managed under various names for the benefit of the stockholders of the said Corn Products Company.

57 And in and by said bill it is further alleged that the said New York Glucose Company owned, operated and

Cross-bill of Joy Morton, filed June 14, 1907.

controlled certain factories in the State of New York and elsewhere, for the manufacture of glucose; that said New York Glucose Company was organized and is now controlled by said E. T. Bedford, and his associates, who were and are also stockholders, officers and directors of said Corn Products Company, and it is further alleged that 49% of the stock of said New York Glucose Company was held, owned and controlled by the said New York Glucose Company, and the remaining 51% thereof by said E. T. Bedford and his associates.

And in and by said bill it is also alleged that prior to the first day of January, 1906, the said C. H. Matthiessen, Norman B. Ream, William H. Heaton, J. B. Greenhut, C. L. Glass, E. A. Matthiessen, W. J. Calhoun, W. J. Gorman, T. B. Wagoner, H. C. Herget, T. P. Kingsford, F. C. Sherwood and your orator, and others, as officers, directors and majority stockholders of said Corn Products Company combining and confederating together with persons who are officers, directors and majority stockholders of said New York Glucose Company, entered into an unlawful conspiracy to cheat and defraud said complainant, Chicago Real Estate Loan & Trust Company, by destroying the market value of the stock in said Corn Products Company held by said Complainant, and depriving said complainant thereof, without any compensation or return therefor.

And in and by said bill it is further alleged that the method of said conspiracy was by the formation of said Corn Products Refining Company; and that said Corn Products Refining Company is owned and controlled by the officers, directors and stockholders of the said Corn Products Company and others, and that as a part of said conspiracy, the directors of said Corn Products Company gave to said E. T. Bedford and his said associates, the control of said Corn Products Company to enable the said E. T. Bedford and his associates, to form said Corn Products Refining Company, and to transfer to said Corn Products Refining Company the business 57½ of the said Corn Products Company, and its trade secrets and all the factories belonging to it.

And it is further alleged in said bill that through the formation of said Corn Products Refining Company all competition has been destroyed, and that the Corn Products Refining Company has an absolute monopoly of the manufacture and

Cross-bill of Joy Morton, filed June 14, 1907.

sale of glucose and by-products, and is able to fix the price of the same to the public.

And it is further alleged in said bill that at the time said complainant acquired its said stock, and for a long time prior thereto.

And for a considerable time thereafter, the capital stock of the said Corn Products Company was duly listed upon the stock Exchanges of New York and Chicago, and other large cities, and was daily bought and sold in the open market as one of the standard investments of the country, and that said complainant acquired said stock with the view of holding the same as an investment, and that said complainant since the time of its acquisition of said stock has been the holder of the same.

And it is further alleged in said bill that at the time said complainants purchased the said stock, the said Corn Products Company paid regular dividends at the rate of 1-3/4% per quarter on the par value of said stock from the profits of the business so controlled by the said Corn Products Company, and it is further therein alleged that it was the duty of the said Corn Products Company and its officers and directors to continue to so manage its affairs that such dividends upon its stock should and would continue from year to year. And it is further alleged in said bill that if the said Corn Products Company and its officers and directors had honestly and in good faith, continued its said business and the management thereof, the said stock of the said complainant would still be earning and paying such dividends, and would be now be worth $100. per share, but by reason of the bad faith and misconduct of the officers and directors of the said Corn Products Company pursuant to and as a part of the said
58 conspiracy, and the wrongful acts charged in said bill of complaint, the entire stock of the said Corn Products Company ceased to pay or earn dividends and its value has been thus entirely destroyed.

And it is further alleged in said bill that pursuant to said conspiracy said defendants in said bill are now planning and arranging to cause all of the said properties and the said business of said Corn Products Company to be transferred to the said Corn Products Refining Company, and thus permanently destroy the value of the said Complainant's shares of stock.

And it is further alleged in said bill of complaint that all

the properties held in the name of the said Glucose Sugar Refining Company, and the other properties held in other names, are about to be transferred and conveyed to the said Corn Products Refining Company pursuant to said conspiracy.

Cross-bill of Joy Morton, filed June 14, 1907.

And it is further alleged in said bill that said Corn Products Refining Company is a giant pool, trust and combine formed for the purpose of unlawfully regulating, fixing and controlling the price of glucose and grape sugar and other products; that said pool trust and combine is to be made effectual in and through the incorporation of said Corn Products Refining Company; that the parties organizing, creating, promoting and managing said pool, trust and combine are now perfecting their arrangements with the intent and purpose of unlawfully monopolizing, controlling, regulating and fixing the price of glucose, grape sugar and by-products within the State of Illinois and throughout the United States.

And it is further alleged in said bill that said defendants for the purpose of defrauding said complainant of said shares of stock in said Corn Products Company, and defrauding other holders of the stock of said Corn Products Company, have already arranged to obtain control of substantially all the corporations and individuals heretofore engaged in the manufacture and sale of glucose, grape sugar and by-products throughout the United States, and that said Corn Products Refining Company will, pursuant to said conspiracy and
59 for said fraudulent purposes, unlawfully acquired complete control of the said corporations and individuals and of the manufacture and sale of the said products throughout the United States, and that the purpose and intent of the said pool and combination and of the parties forming the same is to create a trust in and a complete monopoly of the manufacture and sale of glucose and grape sugar and give to said Corn Prducts Refining Company the power to regulate, fix and absolutely control the supply and price of glucose and grape sugar in the State of Illinois and throughout the United States.

And in said bill, among other relief, it is prayed that a receiver be appointed by this Honorable Court of the said Corn Products Company, and of its property and plants, and particularly of the said plants held in the name of and operated by the said Glucose Sugar Refining Company in Illinois and elsewhere, and it is further prayed that all said plants be

Cross-bill of Joy Morton, filed June 14, 1907.

managed and operated by said receiver under the orders and directions of this Honorable Court.

And it is further prayed that the said defendants to said bill of complaint be ousted from the possession or control of said property and plants, and that a reorganization be had of the said Corn Products Company and of the several corporations controlled by said Corn Products Company, under the orders and directions of this Honorable Court.

And it is further prayed that said defendants, including said Corn Products Refining Company, be enjoined from making or causing to be made any sale, transfer or conveyance of the said properties or plants, or any or either of them, or any part thereof, to said Corn Products Refining Company, or to any other party defendant to said bill of complaint.

Your orator further represents that said Glucose Sugar Refining Company, one of the defendants to said bill of complaint, the name of which has heretofore been duly changed according to law to Corn Products Manufacturing Co., filed its petition in the Circuit Court of Cook County aforesaid, for the removal of the said cause to the United States Circuit Court in and for the Northern District of Illinois, Eastern Division thereof, and complied with the statutes of the United States in that regard, and said cause was and now is transferred to and pending in the said Circuit Court of the United States in and for the Northern District of Illinois, Eastern Division thereof; and your orator has entered his appearance and filed his answer to said bill, and the said bill and other pleadings and proceedings in said cause are now on file and of record in this Honorable Court as by reference thereto will more fully appear.

Your orator further shows that each and every of the allegations contained in said bill of complaint, charging your orator, or any of the other defendants to said bill of complaint with being, or attempting to create, or be a pool, trust, combine or illegal monopoly, or with committing any act, or taking any steps for the purpose of defrauding said Chicago Real Estate Loan & Trust Company, or of affecting the value of its said stock in said Corn Products Company, or with attempting or threatening to transfer or divert from said Corn Products Company any of its business, property, plants, trade secrets, or assets, or with committing any act contrary to any law of the State of Illinois, or of the United States, or charging any fraud, conspiracy or wrong-doing, whatsoever, is wholly and unqualifiedly false and untrue; and

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that your orator has denied each and every of said allegations in said bill of complaint in the answer which your orator heretofore filed thereto.

Your orator further shows that the laws of the State of Illinois, which said bill of complaint alleges have been violated, and particularly the Act therein referred to as "An Act to define trusts and conspiracies against trade," approved June 20, 1893, in force July 1, 1893, is contrary to the constitution and laws of the State of Illinois, and to the constitution of the United States of America, and the Amend-
61 ments thereto, and particularly the Fourteenth Amendment thereto, and is unconstitutional and void.

And your orator further shows that said bill of complaint further avers that the alleged acts of the defendants thereto are in violation of the laws of the United States, and that said averment has reference to a statute of the United States entitled "An Act to protect trade and commerce against unlawful restraints and monopolies;" and your orator shows that said complainant, Chicago Real Estate Loan & Trust Company, in and by its said bill of complaint, claims and contends that the transactions referred to in said bill are illegal because they contravene said statute of Illinois, and said statute of the United States; whereas your orator avers and states the fact to be that each and every of the acts, doings and transactions complained of in said bill of complaint against said Corn Products Company, and said other defendants, was and is in all respects legal, valid and constitutional, and never contravened or violated, and in no way contravenes or violates either the said statute of Illinois, or the said statute of the United States, or any other statute or law of either said State of Illinois, or of the United States.

Your orator further shows unto your Honors that said Chicago Real Estate Loan & Trust Company, at the time of the filing of its said bill of complaint, was and still is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, and of no other State; that said Corn Products Company is a corporation organized under the laws of the State of New Jersey on February 6, 1902, having a capital stock of $80,000,000., consisting of 300,000 shares of preferred stock of the par value of $100. each, and 500,000 shares of common stock of the par value of $100. each; that over $27,000,000. par value of said preferred stock and over $45,000,000. par value of said common stock have been issued and are outstanding, and are

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owned by a large number of stockholders scattered throughout the United States and elsewhere.

Your orator further shows that the said Chicago Real
62 Estate Loan & Trust Company, on or about February 6, 1902, purchased 450 shares of said preferred stock and 550 shares of said common stock of said Corn Products Company, and since then has been and still is the owner thereof; that said 1000 shares of stock were acquired by said Chicago Real Estate Loan & Trust Company, not by way of security for nor in payment of or on account of any obligation, indebtedness, claim or demand due or owing to said Chicago Real Estate Loan & Trust Company, but were purchased by said company solely as an investment.

Your orator further represents that said complainant, Chicago Real Estate Loan & Trust Company, never had and has not now any power, right or authority to purchase, acquire, own, hold or possess any of the said 1000 shares of stock of said Corn Products Company, or to vote any of said stock at any meeting of the stockholders of said Corn Products Company, or in any manner to direct, control, regulate, interfere with, or have any voice in the business, or management of any of the affairs of said Corn Products Company, and that the said purchase and ownership by said Chicago Real Estate Loan & Trust Company of said 1000 shares of stock was and is ultra vires, and beyond its powers, and that said Chicago Real Estate Loan & Trust Company has no power to exercise any right of ownership over any of said 1000 shares of stock, or to file the bill of complaint herein, or to take any other steps or proceedings as a stockholder of said Corn Products Company.

Your orator further represents that said Chicago Real Estate Loan & Trust Company threatens to and will, unless prevented from so doing by this Honorable Court, vote its said 1000 shares of stock in said Corn Products Company at the meetings annually held by the stockholders of said Company, and at all other meetings of said stockholders, and interfere with the due and proper management and control by said Corn Products Company, of its business and property.

Your orator further represents on information and belief, and therefore so says, that said Chicago Real Estate Loan & Trust Company did not file its said bill of complaint in good faith, or because of the supposed existence of any of the
63 matters therein alleged, or because it believed any of the allegations therein of wrong-doing to be true, or for the

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purpose of actually protecting its interest as a stockholder in said Corn Products Company, or for the purpose of protecting any of the property, business or affairs of said Corn Products Company, or conserving the same, or because it believed that there was any occasion or necessity for so doing; but said bill of complaint was filed and said proceedings instituted by said Chicago Real Estate Loan & Trust Company, as your orator is informed and believes, and therefore says, solely for the purpose of harassing and annoying said Corn Products Company, and its co-defendants to said bill of complaint, including your orator, and diminishing and destroying the value of the business and properties of and the shares of stock in said Corn Products Company, and its said co-defendants, Glucose Sugar Refining Co., Corn Products Refining Co. and New York Glucose Co., and to discredit said companies, and particularly said Corn Products Company, with the general public and the numerous stockholders in said defendant corporations, by praying for a receiver of said Corn Products Company, and for a reorganization thereof under the directions of the Court; that said bill of complaint was filed by said Chicago Real Estate Loan & Trust Company in the hope and with the expectation on the part of said Chicago Real Estate Loan & Trust Company that some or all of the defendants to said bill of complaint, including your orator as a stockholder and director of said Corn Products Company, would, for the purpose of protecting and conserving the business and properties of said corporation, purchase from said Chicago Real Estate Loan & Trust Company at some exorbitant or fabulous price many times pany its said 1,000 shares of stock in said Corn Products in excess of its real value.

Your orator further represents that he now is and ever since the organization of said Corn Products Company has been the owner and possessor of a portion of the capital stock of said Corn Products Company, and has also, during all
64 of said time, been and still is a director thereof, and that your orator is interested in the welfare, management, business and property of said Corn Products Company, both as a stockholder therein and a director thereof.

Your orator further represents that the value of the property, business and assets of said Corn Products Company and of your orator's interest therein as a stockholder and director thereof, have been and are diminished, impaired and affected to the extent of more than $5,000., exclusive of inter-

Cross-bill of Joy Morton, filed June 14, 1907

est and costs, by the filing of said bill of complaint and the prayer therein for the appointment of a receiver of the property of said Corn Products Company and for a reorganization of said company under the directions of the Court; that the precise amount of damages which said Corn Products Company and your orator severally have sustained and will sustain by the filing and prosecution of said bill of complaint by said Chicago Real Estate Loan & Trust Company can not be definitely ascertained or measured, but as you orator verily believes, and therefore says, will amount to to-wit: ten thousand dollars, and that said Chicago Real Estate Loan & Trust Company is not financially able to adequately respond to your orator and said Corn Products Company for such damages as have been and will be severally sustained by them as aforesaid, and that by reason of the premises, said Chicago Real Estate Loan & Trust Company should be enjoined from further prosecuting its said suit and from taking any action or proceedings as a stockholder of said Corn Products Company in any manner seeking or tending to control, regulate or interfere with any of the business or property of said Corn Products Company, or the management thereof, or from voting or asserting any rights as owner of said 1,000 shares of stock in said Corn Products Company.

Forasmuch, Therefore, as your orator is wholly without remedy in the premises, except by the filing of this cross-bill in said proceedings commenced by the said Chicago Real Estate Loan & Trust Company against your orator and said other defendants, and to the end that said Chicago Real Estate Loan & Trust Company, its directors, officers, agents, attorneys, solicitors and employes may be forthwith tem-
65 porarily, and on final hearing, forever enjoined from voting or attempting to vote, directly or indirectly, at any meeting of the stockholders of said Corn Products Company any of the 1,000 shares of stock of said Corn Products Company so held by said Chicago Real Estate Loan & Trust Company; that it may be decreed herein that said complainant, Chicago Real Estate Loan & Trust Company, had and has no power, right or authority to purchase, acquire, own, hold or possess the said 1,000 shares of stock in said Corn Products Company, and that the said 1,000 shares of stock may be cancelled and forfeited, and that the said complainant, Chicago Real Estate Loan & Trust Company, may be forthwith temporarily, and on final hearing hereof, forever enjoined from owning, holding or possessing the said shares of

Cross-bill of Joy Morton, filed June 14, 1907.

stock, or any part thereof, or from, directly or indirectly, exercising or asserting any acts or ownership over the same, or as a stockholder in said Corn Products Company, and from further prosecuting its bill of complaint filed herein, and from taking any further proceeding therein, or taking any other proceedings of any kind as a stockholder in said Corn Products Company, or, as such stockholder, attempting in any manner whatsoever to regulate, control, interfere with, or have any voice in said Corn Products Company, or the management of its property, business or affairs; and that the said Chicago Real Estate Loan & Trust Company and the said Corn Products Company, who are hereby made defendants hereto, shall be required to make full and direct answer to this cross-bill, but not under oath, their and each of their answers under oath being hereby severally waived; and that said Corn Products Company may be forthwith temporarily, and on final hearing hereof, forever enjoined and restrained by this Honorable Court from permitting any of said one thousand shares of its capital stock to be voted by or on behalf of said Chicago Real Estate Loan & Trust Company, or otherwise, at any meeting of the stockholders of said Corn Products Company, and from recognizing said Chicago Real Estate Loan & Trust Company as a stockholder in said Corn Products Company; and that your orator may have not only a subpoena to the said Chicago Real Estate Loan & Trust Company and to the said Corn Products
66 Company, but also a writ of injunction under the seal of this Honorable Court enjoining the said Chicago Real Estate Loan & Trust Company and Corn Products Company, as herein prayed.

May Your Honors Also Grant to your orator such other and further relief in the premises as the nature of the case shall require and as your Honors shall seem meet.

JOY MORTON.
By MORAN, MAYER, & MEYER &
JAMES M. SHEEAN.
His Solicitors.

MORAN, MAYER & MEYER &
JAMES M. SHEEAN
Solrs. & of Counsel for said cross-complainant.

Endorsed Filed, June 14—1907. H. S. Stoddard, Clerk.

Chancery subpoena, issued June 14, 1907.

67 And on the same day to-wit: the fourteenth day of June, 1907, a certain chancery subpoena issued out of the clerk's office of said Court, directed to the Marshal of said district to execute as prayed for in the cross-bill of Joy Morton this day filed herein. Which said subpoena together with the Memorandum thereto attached and the Marshal's return thereon endorsed is in the words and figures following to-wit:

68 United States of America
Northern District of Illinois, } ss.
Eastern Division.

The United States of America To Chicago Real Estate Loan & Trust Company, a corporation and Corn Products Company, a corporation, Greeting:

We Command You and Every of You, That you appear before our Judges of our Circuit Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on the first Monday in the Month of August next, to answer the Cross-Bill of complaint of Joy Morton, this day filed in the Clerk's office of said Court, in said City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois, to Execute:

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this 14th day of June in the year of our Lord one thousand nine hundred and seven and of our Independence the 131st year.

H. S. STODDARD,
Clerk.

(Seal)

By JOHN H. R. JAMAR,
Deputy.

MEMORANDUM.

Memorandum of clerk.

The above named defendants are notified that unless they and each of them shall enter their appearance in the Clerk's office of said Court, at Chicago, aforesaid, on or before the day to which this Writ is returnable, the complainant's bill, will be taken against them as confessed, and a decree entered accordingly.

H. S. STODDARD,
Clerk.
By JOHN H. R. JAMAR,
Deputy.

69 I have served this writ within my district in the following manner to-wit: Marshal's return to chancery subpoena.

Upon the within named Chicago Real Estate Loan & Trust Company, a corporation, by delivering a true copy thereof to George F. Harding, Jr., president of the said Company on the 18th day of June, A. D. 1907, at Chicago, Illinois. The within named Corn Products Company, a corporation not found within my district.

LUMAN T. HOY,
U. S. Marshal,
By C. T. DONOVAN,
Deputy.

(Endorsed) Filed June 18, 1907, H. S. Stoddard, Clerk.

70 And on to-wit, the first day of July, 1907, come Messrs. Moran, Mayer and Meyer and J. M. Sheean, and entered their appearance for W. J. Calhoun, C. L. Glass and Corn Products Manufacturing Company, sued herein under the name of Glucose Sugar Refining Company in words and figures following to-wit:

Appearance, filed July 1, 1907.

APPEARANCE OF MESSRS. MORAN, MAYER & MEYER AND J. M. SHEEAN, FOR W. J. CALHOUN, C. L. GLASS, & CORN PRODUCTS MANF'G CO.

United States of America,
Northern District of Illinois, } ss.
Eastern Division thereof.

IN THE UNITED STATES CIRCUIT COURT,

In and For the Northern District of Illinois,

Eastern Division.

Chicago Real Estate Loan & Trust Company,
Complainant,
vs.
Corn Products Company *et al.*
Defendants.
} No. 28695

We hereby enter the appearance of W. J. Calhoun, C. L. Glass, and Corn Products Manufacturing Co., sued herein under the name of Glucose Sugar Refining Company, and our appearance as their solicitors.

MORAN, MAYER AND MEYER and
J. M. SHEEAN,
Solicitors for Corn Products Manufacturing Company, W. J. Calhoun, and C. L. Glass.

Dated, Chicago, Illinois, July 1, 1907.

(Endorsed) Filed July 1, 1907, H. S. Stoddard, Clerk.

71 And on to-wit: the eighth day of July, 1807, come the complainant in said entitled cause by its solicitor and filed in the clerk's office of said Court its certain Motion to remand this cause to the Circuit Court of Cook County in words and figures following to-wit.

MOTION TO REMAND.

Motion to remand, filed July 8, 1907.

United States of America,
Northern District of Illinois,
Eastern Division. } ss.

IN THE UNITED STATES CIRCUIT COURT,

In and For the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } In Chancery. No. 28,695.

Now comes the complainant in the above entitled cause, by William J. Ammen, its solicitor, and, entering its special appearance herein for the purposes of this motion, moves the court to remand said cause to the Circuit Court in and for the County of Cook, in the State of Illinois, on the ground that this Court is without jurisdiction to hear and determine the said cause (and for the further reason that, as appears from the record in said cause, filed in this Court, the motion and petition of defendant in said cause for removal of said cause to this Court was, by said defendant, submitted to said State Court before the removal of said cause to this Court and is still pending and undisposed of in said State Court), and, that, if need be, the order of this Court entered in said cause on June 8, 1907, staying proceedings therein in said State Court, and enjoining the complainant, and its officers, etc., from proceeding further with the prosecution of the said cause in said Court be vacated and set aside.

CHICAGO REAL ESTATE LOAN & TRUST COMPANY,
By WM. J. AMMEN,
its solicitor.

WM. J. AMMEN,
Solicitor for Complainant.

(Endorsed) Filed July 8, 1907, H. S. Stoddard, Clerk.

Order of July 8, 1907, overruling motion to remand.

72 And on to-wit: the eighth day of July, being one of the days of the regular July Term of said court, 1907, in the record of proceedings thereof, in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry towit:

ORDER OF JULY 8, 1907.

Chicago Real Estate Loan and Trust Company,
vs.
Corn Products Company, *et al.* } 28695

Now on this day come the parties by their solicitors, the complainant being represented by Mr. William J. Ammen, the defendant Corn Product Manufacturing Company, by Messrs. Moran, Mayer and Meyer and now comes on to be heard the motion of the complainant to remand this cause to the Circuit Court of Cook County, State of Illinois, and the court having heard the arguments of counsel upon said motion and being now fully advised in the premises overrules and denies said motion, to which ruling the complainant then and there excepted.

73 And on to-wit: the sixteenth day of July, 1907 come C. L. Glass, W. J. Calhoun and Corn Products Manufacturing Company by their solicitor and filed in the clerk's office of said Court their joint and several demurrer to the bill of complaint of Chicago Real Estate Loan and Trust Company. Which said demurrer is in the words and figures following to-wit:

JOINT AND SEVERAL DEMURRER OF C. L. GLASS, W. J. CALHOUN AND CORN PRODUCTS MANUFACTURING COMPANY.

Joint and several demurrer of C. L. Glass et al., filed July 16, 1907.

United States of America,
Northern District of Illinois,
Eastern Division thereof. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES
In and For the Northern District of Illinois,
Eastern Division.
August Term, A. D. 1907.

Chicago Real Estate Loan & Trust Company,
Complainant,
vs.
Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. B. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut,
Defendants.

In Chancery.
Number 28695.

The joint and several demurrer of C. L. Glass, W. J. 74 Calhoun, and Corn Products Manufacturing Co., sued herein as Glucose Sugar Refining Company, defendants, to the bill of complaint of Chicago Real Estate Loan and Trust Company, the above named complainant.

These defendants by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, do jointly and severally demur to the said bill, and for causes of demurrer jointly and severally show:

1. That the said complainant has not, in and by its said

Joint and several demurrer of C. L. Glass et al., filed July 16, 1907.

bill, made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for, from or against these defendants, or any or iether of them.

2. That there is a misjoinder of parties defendant to the said bill of complaint.

3. The said bill of complaint is multifarious in that there is a misjoinder of several separate causes of action therein whereto some of said defendants are not proper parties, and which said causes of action cannot be properly joined in one bill of complaint.

4. The said bill of complaint is multifarious in that it raises several distinct issues which cannot be properly or equitably joined or determined upon one bill of complaint.

5. That there is a non-joinder of necessary parties defendant to said bill of complaint.

6. It appears from the allegations of said bill of complaint that the courts of New Jersey have the sole and exclusive jurisdiction of the subject matter of said bill of complaint.

7. The said bill of complaint is uncertain, ambiguous, contradictory and insufficient.

75 Wherefore, and for divers other good causes of demurrer appearing in the said bill these defendants do jointly and severally demand the judgment of this Honorable Court, whether they or any of either of them, shall be compelled to make any further or other answer to the said bill; and jointly and severally pray to be hence dismissed with their costs and charges, in this behalf most wrongfully sustained.

MORAN, MAYER & MEYER and
J. M. SHEEAN,
Solicitors for said defendants.

Certificate of Isaac H. Mayer.

I certify that in my opinion the foregoing demurrer of C. L. Glass, W. J. Calhoun and Corn Products Manufacturing Co., defendants to the said bill of complaint of Chicago Real Estate Loan and Trust Company, the above named complainant, is well founded in law and proper to be filed in the above cause.

ISAAC H. MAYER,
Of counsel and solicitor for said defendants

State of Illinois, } ss.
County of Cook, }

Affidavit of C. L. Glass.

C. L. Glass, being first duly sworn, on oath deposes and says that he is one of the defendants in the cause entitled as above in the foregoing demurrer and makes this affidavit on his own behalf and as agent for and on behalf of said W. J. Calhoun and said Corn Products Manufacturing Co., and that this deponent is duly authorized to make this affidavit as such agent and that deponent has read the foregoing demurrer to the bill of complaint and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

C. L. GLASS.

76 Subscribed and sworn to before me, a Notary Public by said C. L. Glass, this 16th day of July, A. D. 1907.

F ARTHUR MYREN,
(Seal) *Notary Public in and for said Cook*
Cook County, Illinois.

My commission expires March 7th, 1911.

(Endorsed) Filed July 16, 1907, H. S. Stoddard, Clerk.

77 And on to-wit: the fifth day of August, 1907, come the Chicago Real Estate Loan and Trust Company by its solicitor and filed in the clerk's office of said Court its certain demurrer to the cross-bill of Joy Morton in words and figures following to-wit:

SE IN CENTER

Demurrer to cross-bill, filed Aug. 5, 1907.

78 DEMURRER TO CROSS-BILL

United States of America,
Northern District of Illinois, } ss.
Eastern Division, Thereof.

IN THE CIRCUIT COURT OF THE UNITED STATES

In and For the Northern District of Illinois,
Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiesses, C. L. Glass, William W. Heaton, E. A. Matthiesses, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. B. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut, *Defendants.*	Original Bill Number 28695.
Joy Morton, *Cross-complainant,* *vs.* Chicago Real Estate Loan & Trust Company and Corn Products Company, *Cross-defendants.*	Cross-Bill.

Demurrer to Cross-Bill.

The demurrer of the Chicago Real Estate Loan & Trust Company as defendant to the Cross-bill of Joy Morton filed in the above entitled cause.

This defendant, the said Chicago Real Estate Loan & Trust Company, by protestation, not confessing or acknowledging all or any of the matters and things set forth in the said

Cross-bill of the said Joy Morton to be true, in such manner and form as the same are therein set forth and alleged, demurs to the said Cross-bill for the reason that the same is wholly insufficient in law to be answered unto by this defendant and does not show that the said cross-complainant is entitled to any relief in equity in the premises. Demurrer to cross-bill, filed Aug. 5, 1907.

And for special causes of demurrer to the said cross-
79 bill said defendant shows and assigns the following:

1. In that the said Chicago Real Estate Loan & Trust Company and the said Corn Products Company are improperly joined as co-defendants to said cross-bill, it fully appearing from said cross-bill that said Corn Products Company is interested wholly on the side of and with the said cross-complainant, Joy Morton, in the subject matter of the said cross-bill, and should, therefore, be a co-complainant with the said Joy Morton in the said cross-bill and not a defendant thereto.

2. In that there is a non-joinder of proper and necessary parties complainant in said cross-bill it appearing from the said cross-bill that the said Corn Products Company, and other defendants to the original Bill of Complaint in said cause, are proper and necessary parties to the said cross-bill, respectively, and none of them are made parties thereto.

3. In that the said cross-bill is not germane to the original Bill of Complaint filed in said cause, but is wholly foreign thereto.

4. In that the allegations in the said cross-bill that said Chicago Real Estate Loan & Trust Company "never had and have not now any power, right, or authority to purchase, acquire, own, hold or possess any of the said 1000 shares of stock of said Corn Products Company, or to vote any of said stock at any meeting of the stockholders of said Corn Products Company, or in any manner to direct, control, regulate, interfere with, or have any voice in the business, or management of any of the affairs of said Corn Products Company," and that the purchase and ownership thereof by said Chicago Real Estate Loan & Trust Company was and is ultra vires, and that said Chicago Real Estate Loan & Trust Company has no power to exercise any right of ownership over any of said one thousand shares of stock or to file its said Bill of Complaint herein or take any other steps or proceedings as a stockholder of said Corn Products Company, and all other allegations of like character in the said cross-bill, are, wholly, and respectively, mere conclusions upon the part of the said cross-complainant, and no facts are set forth in the

Demurrer to cross-bill, filed Aug. 5, 1907.

said cross-bill upon which said conclusions are or can be based, and said cross-bill is, therefore, wholly insufficient in law to be answered unto.

80 5. In that the complainant in the said cross-bill cannot, in this proceeding, question the right of said Chicago Real Estate Loan & Trust Company to purchase, acquire, own, hold or possess the said one thousand shares of stock of said Corn Products Company, or any of them, or the right of said Chicago Real Estate Loan & Trust Company to exercise any and all acts incidental to its ownership of such stock.

6. In that the allegations of the said cross-bill that the value of the property, business and assets of said Corn Products Company, and of said cross-complainant's interest therein as a stockholder and director thereof, "have been and are diminished, impaired and affected * * * by the filing of said Bill of Complaint", etc., are statements of mere conclusions of said cross-complainant, as no facts are set forth in said cross-bill upon which said said conclusions are or can be based, and said cross-bill is therefore wholly insufficitent in law to be answered unto by this defendant.

7. In that it does not appear from the matters and things set forth in said cross-bill that said cross-complainant is entitled to the relief thereby sought, or therein prayed for, or any part thereof, or any relief whatsoever, in the premises.

8. In that the said cross-bill is otherwise so uncertain, ambiguous, and insufficient, that the said cross-complainant is not entitled to an answer thereto from this defendant.

Wherefore, and for divers other good and sufficient causes of demurrer appearing in said cross-bill this defendant thereto doth demur thereto and humbly demands the judgment of this Honorable Court whether it shall be compelled to make any further or other answer to the said cross-bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained, and this defendant will ever pray, etc.

CHICAGO REAL ESTATE LOAN AND TRUST COMPANY
By WM. J. AMMEN,
its attorney

WM J AMMEN
Solicitor for said Chicago Real Estate Loan & Trust Company.

81 United States of America,
Northern District of Illinois, } ss.
Eastern Division Thereof.

Affidavit of Gregory T. Van Meter.

Gregory T. Van Meter, being first duly sworn, deposes and says that he is the agent in this behalf of the Chicago Real Estate Loan & Trust Company, one of the defendants to the cross-bill of Joy Morton filed in the above entitled cause, and duly authorized to make this affidavit, as such agent, and that the above and foregoing demurrer of said Chicago Real Estate Loan & Trust Company is not interposed for delay.

GREGORY T. VAN METER

Subscribed and sworn to before me this 5th day of August, A. D. 1907.

ALICE WILLNER

(Seal) *Notary Public, in and for Cook County, Illinois.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

WM. J. AMMEN
Attorney for said Chicago Real Estate Loan & Trust Company.

(Endorsed) Filed Aug 5, 1907 H. S. Stoddard, Clerk

82 And on to-wit, the fifth day of August, 1907, come the Chicago Real Estate Loan and Trust Company by its solicitor and filed in the clerk's office of said Court its certain replication to the answer of Joy Morton in words and figures following to-wit:

Replication, filed Aug. 5, 1907.

83

REPLICATION

United States of America,
Northern District of Illinois,
Eastern Division, Thereof. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES
In and For the Northern District of Illinois,
Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiesses, C. L. Glass, William W. Heaton, E. A. Matthiesses, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. B. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut, *Defendants.*	Original Bill Number 28695.

The replication of the Chicago Real Estate Loan & Trust Company, complainant, to the answer of Joy Morton, one of the defendants to the Bill of Complaint of said Chicago Real Estate Loan & Trust Company, filed in the above entitled cause.

This replicant, the Chicago Real Estate Loan & Trust Company, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the said answer of the said defendant, Joy Morton, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant thereto is uncertain, evasive, and insufficient in law to be replied unto by this replicant; without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently

replied unto, confessed, or avoided, traversed, or denied is true; all of which matters and things this replicant is ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed. Replication, filed Aug. 5, 1907.

WM. J. AMMEN
Solicitor for complainant.

(Endorsed) Filed Aug. 5, 1907, H. S. Stoddard, Clerk.

84 And on towit: the eighteenth day of October, 1907, come Corn Products Refining Company by its solicitor and filed in the clerk's office of said court its certain answer to the bill of complaint of the Chicago Real Estate Loan and Trust Company in words ad figures following to-wit: Answer of Corn Products Refining Co., filed Oct. 18, 1907.

85 ANSWER OF CORN PRODUCTS REFINING CO.

United States of America,
Northern District of Illinois, } ss.
Eastern Division Thereof.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for the Northern District of Illinois,
Eastern Division.

Chicago Real Estate Loan & Trust Company,
Complainant,
-vs-
Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William M. Heaton, E. A. Matthiesson, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagoner, H. G. Herget, T. P. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut,
Defendants.
} No. 28,695.

Answer of Said Defendant, Corn Products Refining Company, to the Bill of Complaint of the Chicago Real Estate Loan & Trust Company, Complainant.

This defendant, now and at all times hereafter saving and

Answer of Corn Products Refining Co., filed Oct. 18, 1907.

reserving unto itself all manner of benefit and advatage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill of complaint contained, for answer thereunto or to so much and such parts thereof as it is advised it is or are material or necessary for it to make answer unto, answering says:—

1. That as to each and every allegation in said bill of complaint contained, not herein specifically admitted or denied this defendant neither admits nor denies such allegations but asks for strict proof of each and every thereof.

86 2. This defendant admits that said complainant, Chicago Real Estate Loan & Trust Company, did on or about the 6th day of February, A. D. 1902, become the holder and owner of to-wit, one thousand (1,000) shares of the capital stock of the Corn Products Company, a corporation duly organized and existing under the laws of the State of New Jersey, and that four hundred and fifty (450) shares of said one thousand (1,000) shares were and are preferred shares of stock of the said Corn Products Company, and five hundred and fifty (550) shares of said one thousand (1,000) shares were and are common shares of stock of the said company; and this defendant, further answering, says that said Corn Products Refining Company is a corporation duly organized and existing under the laws of the State of New Jersey, and that it has the express power, under and by the terms of its charter, to purchase and acquire, and that prior to the filing of said bill it purchased and acquired, and now owns a majority of the capital stock of the said Corn Products Company.

3. Further answering, this defendant says that said complainant, as such stockholder as aforesaid, did on the 6th day of February, A. D. 1902, and continuously since said time, up to and including the date of the filing of the bill of complaint herein, know each and every act and transaction of the officers and board of directors of said Corn Products Company, and all of the acts and doings, business and transactions of said Corn Products Company, and did at all times immediately before the purchase of said stock of said Corn Products Company by said Corn Products Refining Company know of such contemplated purchase, and at the time of such purchase did know thereof; and said complainant has at all times, and at each annual meeting of stockholders of said Corn Products Company known of all acts, transactions and business of said Corn Products Company, and of each

Answer of Corn Products Refining Co., filed Oct. 18, 1907.

of its officers and directors, made, had and taken during the fiscal year of said Corn Products Company, immediately preceding each annual stock-holders' meeting as aforesaid, and that knowing such facts, and each and every of the same, said complainant, as the owner of said one thousand (1,000) shares of stock of said Corn Products Company, has at all times continuously since February 6, 1902 expressly concurred in, consented to and ratified and approved all of the acts, doings, business and transactions of every kind of said Corn Products Company, and of all of its officers, directors and stockholders, and that said complainant has at each and all of the annual meetings of said Corn Products Company (such annual meetings having been held once each year since said February 6, 1902 up to and including the year 1907) at all times voted said one thousand (1,000) shares of said stock in full approval and ratification of, and has approved and ratified all of the acts, business, doings and transactions of said Corn Products Company, and all of its officers, directors and stock-holders, and at no time has said complainant objected to or made any objection to the acts, doings, business and transactions, management and conduct of the business of said Corn Products Company, or of any or all of its officers, directors and stockholders, as aforesaid.

That at said annual meetings of the stockholders of said Corn Products Company, held in March 1902, March 1903, March 1904, March 1905, March 1906, and March 1907, respectively, said complainant, with full knowledge, as aforesaid, voted said one thousand (1000) shares of stock in ratification of, and did then and there at each of said stockholders' meetings, as aforesaid, ratify and approve, by express vote, all of the acts, doings, business and transactions of the officers, board of directors and stockholders of said Corn Products Company, and that said complainant did not at any of said meetings, or at any other time prior to the filing of the bill of complaint herein, make any objection to any of the conduct, management, business or transactions of said Corn Products Company, or any of its officers, directors or stockholders.

4. This defendant, further answering, says that prior to its acquiring said Corn Products Company stock, the question of making such sale was duly submitted to the stockholders of said Corn Products Company, at a meeting duly called for that purpose in, to-wit: the month of March 1903; that at such meeting said complainant, as the holder of said one

Answer of Corn Products Refining Co., filed Oct. 18. 1907.

thousand (1000) shares of stock of said Corn Products Company, attended and did vote its said one thousand (1000) shares of stock for and in favor of said sale, upon certain terms then and there disclosed to said meeting and to said complainant, and that such purchase and sale was made upon said terms, and that said one thousand (1000) shares of stock so as aforesaid voted by said complainant in favor of making said sale, together with the other shares of stock present at said meeting, constituting a majority of all the capital stock of said Corn Products Company, induced this defendant to make such purchase of the majority shares of the capital stock of said Corn Products Company, and that such purchase was made pursuant to said action at such meeting, and that this defendant relied upon the vote of the stockholders of said Corn Products Company, including the vote of said complainant, and upon such reliance, made and paid a valuable consideration for said purchase as aforesaid, and that said complainant at all times prior to said sale, and continuously since the making of said sale, up to the time of filing complainant's said bill of complaint herein, expressly approved of said sale and the purchase and acquirement by this defendant of the majority of the capital stock of said Corn Products Company, and expressly ratified, acquiesced in, and approved of the terms and conditions of such purchase, and said complainant voted said one thousand (1,000) shares of stock in ratification of said sale and purchase as aforesaid.

That said complainant, immediately prior to and at the time of the sale of the majority of such capital stock of said Corn Products Company and the purchase of such majority shares of stock by this defendant, was the owner and holder of other shares of preferred and common stock of said Corn Products Company, and that said complainant did vote said shares also in favor of the sale and transfer of a majority of the shares of stock to this defendant upon the terms and conditions then and there disclosed to and known by said complainant, and upon which such sale and transfer was made, and that pursuant to such vote of said complainant of the shares of stock so owned by said complainant, such sale and transfer was made, and that as a part and parcel of such sale and transfer of a majority of said stock as aforesaid to this defendant, the shares of preferred and common stock so voted by said complainant, other than said one thousand (1,000) shares as aforesaid, were immediately trans-

Answer of Corn Products Refining Co., filed Oct. 18, 1907.

ferred by said complainant to this defendant, and in exchange therefor said complainant did take and receive under the terms and conditions of such sale and transfer, preferred and common shares of this defendant, and that said complainant has at all times retained said preferred and common shares of this defendant, and with full knowledge at the time, of all acts, doings and conduct of this defendant, and its officers, directors and stockholders, voted the same at the various meetings of the stockholders of this defendant in favor and approval of all its acts and has for many years from time to time received dividends thereon from this defendant, and at no time has said complainant, as the owner of said preferred and common shares, although it always had full knowledge thereof, objected to any of the acts or doings, or the business or transactions had by this defendant, or any of its officers, agents, directors, or stockholders, but, on the contrary, said complainant has at all times knowingly acquiesced in, voted for, and approved of the same, and that since February 6, 1902, said complainant has quarter-annually received and accepted dividends upon said preferred and common shares of stock so owned and held by it in said Corn Products Company and still retains all such dividends so received from this defendant and said Corn Products Company, respectively.

5. And said defendant has at all times relied upon the actions as aforesaid of said complainant with reference to the sale of said stock of said Corn Products Company, and the purchase of the same by this defendant, and this defendant avers and charges that said complainant has been guilty of laches, is estopped by reason of said actions as aforesaid from in any manner questioning the purchase or acquirement by this defendant of the stock of said Corn Products Company, or the conduct or management of the business of said Corn Products Company, or of this defendant, or of their respective officers, directors or stockholders, and that this defendant relies upon said estoppel and laches of said complainant, and charges the same to be a bar to the maintenance by said complainant of its bill of complaint, and now here prays the same advantage of said estoppel as if it had specially pleaded the same herein.

6. This defendant says that said complainant has not in and by its said bill of complaint made or shown any such

Answer of Corn Products Refining Co., filed Oct. 18, 1907.

cause of action as entitles it to any of the relief therein
90 prayed for, and that said bill of complaint is wholly without equity.

7. And this defendant denies any and all manner of unlawful combination or confederacy wherewith it is by said bill of complaint charged, without this that there is any other matter, cause or thing in the said complainant's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove, if this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CORN PRODUCTS REFINING COMPANY,
By MORAN, MAYER & MEYER and JAMES SHEEAN,
Its Attorneys.

MORAN, MAYER & MEYER and JAMES SHEEAN,
Of Counsel.

(Endorsed) Filed Oct. 18, 1907, at 11.20 A. M. H. S. Stoddard, Clerk.

91 And on towit: the fourth day of November, 1907 come the Corn Products Refining Company, by its solicitor and filed in the Clerk's office of said Court its certain Petition in words and figures following to-wit:

92 PETITION OF CORN PRODUCTS REFINING COMPANY

Petition of Corn Products Refining Co., filed Nov. 4, 1907.

IN THE CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois

Eastern Division.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.*
} No. 28,695.

Now comes Corn Products Refining Company, one of the defendants to said bill, and states the following:

1: Said bill was filed in the Circuit Court of Cook County, Illinois, on May 4, 1907; on June 8, 1907, by leave of this court, a transcript of the record in said cause in said State Court was filed in this court, and on the same date this court entered an order herein staying the proceedings in said State Court and restraining, until the further order of this Court, the said complainant its officers, agents, representatives, counsel, solicitors and attorneys from proceeding further with the prosecution of said cause in said State Court; that on July 8, 1907, said complainant moved to remand said cause to the State Court, and on the same date said motion was denied and overruled; that said bill is signed, "Chicago Real Estate Loan & Trust Company, by A. B. Joyner, its Solicitor".

2: That notwithstanding the premises, on October 19, 1907, there was filed in the Superior Court of said Cook County a certain bill, as General Number 263,565; that said bill was printed before it was filed, and, as appears on the face thereof, was first entitled in the Circuit Court of said Cook County;

93 that the complainant first named in said printed bill before it was filed was Chicago Real Estate Loan & Trust Company, which as appears on the face of said bill, was changed to that of George F. Harding, and that the bill so changed in its caption and in the name of its complainant, was so filed in said Superior Court, where it is still pending; that on October 25, 1907, said bill was amended; that said bill and said amended bill are signed, "A. B. Joyner, solicitor for complainant." that an oriignal-duplicate of said printed

Petition of Corn Products Refining Co., filed Nov. 4, 1907.

bill, as filed, in said Superior Court is attached hereto and made a part hereof.

Your petitioner, upon information and belief, states that George F. Harding was until recently the President of said Chicago Real Estate Loan & Trust Company, and that for many years last past he owned or controlled, and now owns or controls substantially all of the capital stock and controls all of the directors of said company, and that his son George F. Harding, Jr., is now the President thereof; and that the board of directors of said company is now composed of either members of his family or of clerks or irresponsible nominees.

Your petitioner further alleges that said company was originally organized under the name of Peoria Starch Manufacturing Company, under the charter granted by the Legislature of the State of Illinois on or about February 11, 1857; that as its name implies, one of its objects of incorporation was to manufacture starch, and that its charter fixed the minimum of its capital stock at forty thousand dollars ($40,000.) and the maximum at not more than Two Hundred and Fifty Thousand Dollars ($250,000.); that on or about March 27, 1894, the name of said Peoria Starch Manufacturing Company was changed to that of Chicago Real Estate Loan & Trust Company.

Your petitioner further alleges, upon information and belief, the following:

that said company has been used as a cloak and shield for the concealment of the property and effects of said George F. Harding, and that for some years last past he was a defendant to litigation in which his wife, in the State Courts of Illinois, sought to secure maintenance and alimony, which
94 was finally decreed to her, and that in order to evade the payment of such maintenance and alimony, said company was used as a device whereby he might be enabled to either secrete his property or belittle the amount of his effects, and the various phases of said litigation appear in the printed reports of the decisions of the Illinois courts and of the United States Supreme Court, to which reference is hereby made, among them being Harding v. Harding, 79 Ill. App. 590; 79 Ill. App. 621; 180 Ill. 481; 180 Ill. 692; 205 Ill. 105; 198 U. S. 317.

That said George F. Harding was, as your petitioner is informed and believes, born in the State of Illinois; and that he is now over seventy years of age, and that he has con-

Petition of Corn Products Refining Co., filed Nov. 4, 1907.

tinuously during his life been a resident and citizen thereof until he moved to California, wherein he instituted proceedings for a divorce against his wife, and which proceedings are the same proceedings referred to in Harding v. Harding, 198 U. S. 317, and which proceedings were unsuccessfully used as a defense to the said alimony and maintenance proceedings pending in the Illinois Courts, as is shown by said decision of the United States Supreme Court.

4. That the bill herein is a class bill and alleges that said Chicago Real Estate Loan & Trust Company is the holder and owner of one thousand shares of the capital stock of said Corn Products Company, and that four hundred and fifty thereof are preferred, and that five hundred and fifty thereof are common shares; that said second bill is also a class bill and alleges that said George F. Harding is the owner and holder of five hundred shares of the stock of said Corn Products Company, consisting of equal amounts of preferred and common stock; and your petitioner alleges upon information and belief that the stock upon which said first bill is based, and also that upon which said second bill is based, was owned, held or controlled on May 4, 1907, when said first bill was filed, and continuously since has been and still is owned, held or controlled by said Chicago Real Estate Loan & Trust Company and said George F. Harding, or either of them.

95 Your petitioner further shows that the parties defendant to both suits are substantially the same, and that the subject-matter thereof is likewise so, and that this court, in said cause pending herein, has first acquired jurisdiction, with the full power to hear and determine all controversies relating thereto.

Wherefore, the premises considered, your petitioner prays that said George F. Harding and said A. B. Joyner, his Solicitor, be enjoined and restrained from the further prosecution of the said bill so filed in said Superior Court of Cook County, on October 19, 1907, as amended on October 25, 1907, and from taking and and all further proceedings therein; and that they be required by the order of this court to dismiss said bill so filed in said Superior Court of Cook County on October 19, 1907, as amended on October 25, 1907.

Respectfully submitted

CORN PRODUCTS REFINING COMPANY
by MORAN, MAYER & MEYER,
its Sols.

Affidavit of Hal C. Bangs.

State of Illinois }
County of Cook. } ss.

Hal C. Bangs, being first duly sworn, upon oath deposes and says that he is the agent in this behalf of said Corn Products Refining Company; that he is familiar with said litigation, and has made careful, exhaustive and diligent search into the facts and circumstances detailed in the above and foregoing motion; that all of the facts therein stated, except the facts therein alleged upon information and belief, are true, and as to the facts therein alleged to be upon information and belief, he believes the same to be true.

HAL C. BANGS.

Subscribed and sworn to before me, a Notary Public, this 4th day of November, A. D. 1907.

FRANCIS E. MATTHEWS,
(Seal) *Notary Public*

(Endorsed) Filed Nov. 4, 1907, H. S. Stoddard, Clerk.

96 And on to-wit, the fourth day of November, being one of the days of the regular July Term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry to-wit:

97 ORDER OF NOVEMBER 4, 1907 Order of Nov. 4, 1907.

United States of America
Northern District of Illinois, } ss.
Eastern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Monday, November 4th, 1907.

Present: Honorable Christian C. Kohlsaat, Circuit Judge

Chicago Real Estate Loan & Trust Company,
—*vs*—
Corn Products Company, *et al.* } Gen. No. 28,695.

This day comes the Corn Products Refining Company, one of said defendants, by Moran, Mayer & Meyer, its solicitors, and presents its motion for an injunction against the prosecution of a certain suit filed in the Superior Court of Cook County, Illinois, on October 19, 1907, the bill in which suit was amended on October 25, 1907, and which suit bears the General Number 263,565, and is entitled George F. Harding v. The Standard Oil Company of New Jersey, Corn Products Refining Company and others, defendants, and also for an order to compel the dismissal of said suit, and upon considering said motion and the record herein, it is

Ordered that said George F. Harding and A. B. Joyner his solicitor, appear before this Court on the 12th day of November, 1907 at ten o'clock in the forenoon of that day, and then and there, or as soon thereafter as counsel can be
98 heard, show cause why a temporary injunction should not issue out of and under the seal of this Court directed to the said George F. Harding and A. B. Joyner, and each of them, and their and each of their agents and representatives, restraining them and each of them from the further prosecution of said suit in said Superior Court of Cook County, and also at the same time show cause why said George F. Harding and his said solicitor A. B. Joyner should not be

Order of Nov. 4, 1907.

directed to dismiss said suit so pending in said Superior Court.

It Is Further Hereby Ordered that until the hearing and disposition of said motion for an injunction (whether heard on the date upon which the same was set for hearing or upon any subsequent date) said George F. Harding and said A. B. Joyner, and each of them, and their and each of their agents and representatives be and they and each of them hereby are jointly and severally restrained from proceeding further with the prosecution of, or taking any steps of any kind in said case of George F. Harding v. The Standard Oil Company of New Jersey, Corn Products Refining Company, and others, numbered 263,565 in the Superior Court of said Cook County; all until the further order of this court.

99 And on to-wit: the fifth day of November, 1907, come the Chicago Real Estate Loan & Trust Company by its solicitor and filed in the clerk's office of said Court its certain replication to the answer of the Corn Products Refining Company, in words and figures following to-wit:

100 REPLICATION.

Replication, filed Nov. 5, 1907.

United States of America
Northern District of Illinois, } ss.
Eastern Division, Thereof.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W. J. Gorman, T. B. Wagner, H. G. Herget, T. B. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut, *Defendants.*	Original Bill Number 28695.

The replication of the Chicago Real Estate Loan & Trust Company, complainant, to the answer of the Corn Products Refining Company, one of the defendants to the Bill of Complaint of said Chicago Real Estate Loan & Trust Company, filed in the above entitled cause.

This replicant, the Chicago Real Estate Loan & Trust Company, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the said answer of the said defendant, said Corn Products Refining Company, for replication thereunto, saith that it doth and will aver, maintain, and prove its said bill of complaint, to be true, certain, and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant thereto is uncertain, evasive, and insufficient in law to be replied unto

Replication, filed Nov. 5, 1907.

matter or thing
by this replicant; without this, that any other m tual in the law
in the said answer contained, material or effect well and suffi
to be replied unto, and not herein and hereby averred, or de
ciently replied unto, confessed, or avoided, tra this replican
nied, is true; all of which matters and things his Honorable
is ready to aver, maintain, and prove, as th nd by its said
Court shall direct, and humbly prays as in a
bill it hath already prayed.

J. Ammen,
Wm. J r *Complainant.*
Solicitor for

(Endorsed) Filed Nov. 5, 1907, H. S. Stod ldard, Clerk.

Affidavit of Edward T. Bedford, filed Nov. 11, 1907.

ovember, 1907,
101 And on to-wit: the eleventh day of No Court in said
there was filed in the clerk's office of said T. Bedford, in
entitled cause the certain affidavit of Edward
the words and figures following to-wit:

AFFIDAVIT OF EDWARD T. BEDI FORD.

In the Circuit Court of the United S States

Northern District of Illinois

Eastern Division.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.*
} No. 28,6 695.

State of New York, }
County of New York. } ss.

he is President
Edward T. Bedford, being duly sworn, says h oration organ-
of Corn Products Refining Company, a corpo of New Jersey,
ized and existing under the laws of the State o id company in
and has been such since the organization of sa
February, 1906.

Deponent further says that said Corn Proc ducts Refining
Company is the owner of 247,910 shares of the preferred
stock and 438,874 shares of the common stock of Corn Prod-
ucts Company, making a total of 686,784 shar res. That the
total outstanding issued stock of said Corn P Products Com-

Affidavit of Edward T. Bedford, filed Nov. 11, 1907.

pany amounts to 273,807.4 shares of preferred stock and 452,155.05 shares of common stock, making in all 725,962.45 shares, so that the Corn Products Refining Company is
102 the owner of 94.5 per cent. of the issues capital stock of said Corn Products Company.

Deponent further says that said Corn Products Company is the owner of 136,002 shares of the preferred stock of Corn Products Manufacturing Company (formerly Glucose Sugar Refining Company) and 236,772 shares of the common stock of said company, making in all 372,774 shares of stock of said company. That the total issued capital stock of said Corn Products Manufacturing Company is 136,383 shares of preferred stock and 240,273 shares of common stock, making in all 376,656 shares; so that said Corn Products Company is the owner of 98.9 per cent. of the issued capital stock of said Corn Products Manufacturing Company.

Deponent further says that he, of his own knowledge. knows that neither the Standard Oil Company of New Jersey nor any of the other Standard Oil Companies are now or have been at any time the owners of any of the stock of said Corn Products Refining Company, Corn Products Company or Corn Products Manufacturing Company.

That deponent is also personally acquainted with all the officers and directors of said Standard Oil Company of New Jersey, and is familiar with their holdings of stock of said Corn Products Refining Company, Corn Products Company and Corn Products Manufacturing Company. That the total number of shares of stock of said Corn Products Manufacturing Company held by all of the officers and directors of said Standard Oil Company amount to two shares of common stock; and the total number of shares of said Corn Products Refining Company held by all of said officers and directors collectively is not equal to six per cent. of the outstanding stock of said Corn Products Refining Company.

103 Deponent further says that he knows of his own knowledge that neither said Standard Oil Comapny of New Jersey nor any other of the Standard Oil Companies is interested, directly or indirectly, in any of the stock of said Corn Products Refining Company, Corn Products Manufacturing Company or Corn Products Company; and that the stock of any of said companies standing in the names of the officers and directors of said Standard Oil Companies are the personal property of said officers and directors and held by them

Affidavit of Edward T. Bedford, filed Nov. 11, 1907.

for their individual and personal benefit and profit, and not in any way for the use or benefit of any of said Standard Oil Companies.

E. T. BEDFORD.

Subscribed and Sworn to before me Charles W. Millard, a Notary Public in and for the City, County and State of New York, duly authorized under the laws of the State of New York to administer oaths, this 29th day of October, 1907.

CHAS. W. MILLARD,
(Seal) *Notary Public, New York Co.*
Cert. filed in Kings Co.

(Endorsed) Filed Nov. 11, 1907. H. S. Stoddard, Clerk.

104 And on to-wit: the twelfth day of November, 1907, come George F. Harding and A. B. Joyner by their solicitor and filed in the clerk's office of said Court their certain answers in the matter of the rule to show cause entered November 4, 1907, on the motion or petition of the Corn Products Refining Company, Which said answers are respectively in the words and figures following to-wit:

105 ANSWER OF GEORGE HARDING, IN THE MATTER OF THE RULE TO SHOW CAUSE ENTERED NOVEMBER 4, 1907, ON THE MOTION OR PETITION OF THE CORN PRODUCTS REFINING COMPANY.

Answer of George F. Harding, filed Nov. 12, 1907.

106 United States of America
Northern District of Illinois } ss.
Eastern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company, *vs.* The Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. E. Matthiessen, C. L. Glass, W. J. Calhoun, E. A. Matthiessen, Norman B. Ream, Joy Morton, William W. Heaton, W. T. Gorman, T. B. Waggoner, T. P. Kingsford, H. G. Herget, F. C. Sherwood, E. T. Bedford, and J. B. Greenhut.	In Chancery. No. 28,695.

IN THE MATTER OF THE RULE TO SHOW CAUSE ENTERED NOVEMBER 4, 1907, ON THE MOTION OR PETITION OF THE CORN PRODUCTS REFINING COMPANY.

Now comes George F. Harding, who is not a party to this case, specially appearing only in obedience to the order of this Court entered herein on November 4th, 1907, and shows cause why a temporary injunction should not be issued against him and A. B. Joyner restraining them from the prosecution of a certain suit by said Harding in the Superior Court of Cook County, and why he should not be directed to dismiss said suit, as follows, viz:

The suit in the State Court was begun in the Superior Court

Answer of George F. Harding, filed Nov. 12, 1907.

of Cook County on October 19, 1907, General Number 263563, and the bill is entitled as follows:

George F. Harding, Plaintiff, vs. Standard Oil Company, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, all corporations of the State of New Jersey, and Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. C. Herget, Thomas P. Kingsford, Edward T. Bedford, W. H. Nichols and E. F. Wemple, Defendants; said bill being in accordance with said title, and containing appropriate allegations as is more fully shown by a copy thereof presented with this answer as Exhibit A and made part hereof.

107 That the said suit in said State Court as shown by said bill differs from the suit in this case not only as to parties, but, also, as to subject matter and as to the relief sought, as will appear by said copy of said bill; that scarcely a fact stated in the State bill is to be found in the present bill in this court as therein stated, and this will more fully appear by said bill.

That the principal defendants in the two bills are different, the said Superior Court bill asking relief and making its charges against the Standard Oil Company, as the chief beneficiary of the offences charged in said bill and the principal actor.

The bill in this court asks relief against the New York Glucose Company, E. A. Matthiessen, F. C. Sherwood, J. B. Greenhut, and other defendants not mentioned in or made defendants in said Superior Court bill, while W. H. Nichols, E. F. Wemple, Benjamin Graham, are defendants to the Superior Court bill and charged as conspirators with the Standard Oil Company as more fully shown by said bill.

The two bills are for or in relation to different pieces of property belonging to different parties respectively owned by widely different and unlike plaintiffs as alleged in said bill, and there is no foundation or justice in the claim set out in the said motion or petition, that your respondent has the slightest interest in the stock or property claimed by the plaintiff in the Federal bill in this court.

That there is no pretense in the said Petition and no allegation of any kind that the Chicago Real Estate Loan & Trust Company is or ever was the owner of the stock or property for which this bill was filed by said Harding, and your respondent states that it is entirely untrue that said

Answer of George F. Harding, filed Nov. 12, 1907.

Plaintiffs in said State Court and in this Court have any common interest of any kind whatever in said stock described in said several bills, and this is adroitly concealed and suppressed in the said motion and petition herein.

That every statement in said petition, or motion, or both, whatever they may be called, as to any combinations, or union, or relation, between the said Plaintiffs, relate to events that occurred many years ago, and the alleged facts and inferences touching them in said petition are every one of
108 them false, misstated, and misrepresented, and meant to obscure the question of identity of the Plaintiffs, in said two suits, respectively.

Your respondent further answering says that he does not own and has not at any time for many years last past owned a single share of stock in the said Chicago Real Estate Loan & Trust Company, nor has he been a President, or Officer, or Director, therein or connected with the management of said Chicago Real Estate Loan & Trust Company at any time for many years, last past and it is utterly false that he ever used the said Chicago Real Estate Loan & Trust Company as a cloak or shield for the concealment of his property or effects, or to defeat his wife or any other person, or to evade the payment of alimony or any other matter, or, in any way or to any extent, to secrete his property or belittle the amount of his effects, and it is not true that the various phases of said litigation appear in the printed reports of the decision of the Illinois Courts and of the United States Supreme Court, and the case referred to in 198 U. S., 317, has no reference whatever, as appears upon its face, to the said subject matter of, or to the recovery of alimony or any other matter material in this case, and your respondent alleges that nothing in said litigation can be found which in any way reflects upon your respondent, and this ancient scandal, immaterial and indifferent in this case, is simply brought in because of the want of meritorious matter and in the endeavor to suppress the real truth and divert the court's attention from the real facts in this case.

Your respondent further answering says that the affidavit attached to the said petition by Hal C. Bangs is a fraud and subterfuge on its face, for it fails to define, so that the maker of the said affidavit should be prosecuted for perjury as to what facts or alleged facts are stated in said petition or motion which are true to his knowledge, though meant to be so understood, and are probably used to deceive the court.

Answer of George F. Harding, filed Nov. 12, 1907.

Your respondent further states that nothing is contained in said alleged motion or petition which purports to be within the knowledge of the maker of said petition, except matters of record relating to the proceeding, and having no hearing on the question of the right to an injunction. All else in
109 substance is stated upon information and belief as the said petition shows.

Your respondent further answering says that it is untrue, namely, the legal conclusion stated in said petition, as follows:

"Your petitioner further shows that the parties defendants in both suits are substantially the same and that the subject matter thereof is likewise so, and that this court in said cause pending herein has first acquired jurisdiction with the full power to hear and determine all controversies relating thereto;" but the truth about the matter is, that about half the parties are different and that the subject matter involves the personal liability of many different defendants not less than a half a dozen of which are named as so liable in the present bill in this court and were liable to different plaintiffs.

Your respondent further answering says that he had neither knowledge or notice of said motion or petition or of the said order herein obtained on November 4th, 1907; until after said order was entered and alleges that it was obtained without the knowledge of or any notice to respondent, the plaintiff in state bill, or by or to attorney for plaintiff, in either of said cases, and as he believes without the knowledge of any one, except said defendant in this case, and the attorneys representing said defendants.

Your respondent further states and alleges that this injunction was simply obtained to stop this plaintiff in said case in the Superior Court from attaching the defendants, Morton, Glass and Calhoun, for contempt; and in order to protect them from punishment for failing to obey the subpoenas commanding them to testify to the truth concerning the matters involved in said State case.

That the said defendants were ordered to testify by said subpoenas, at 11 o'clock on November 4th, 1907, and just before the said restraining order was obtained. That they were about to be proceeded against in said court of justice for their misconduct in refusing to testify and in thus evading the authority of the said State Court, when this motion was secretly made and said injunction order was obtained forbidding the Plaintiff in said case "from proceeding further

Answer of George F. Harding, filed Nov. 12, 1907.

with the prosecution of or taking any steps of any kind in said case of George F. Harding against the Standard Oil 110 Company of New Jersey and others;" and so your respondent alleges the truth to be that the said petition and motion were made in this court wilfully, wrongfully, and secretly to prevent the State Court from punishing the said defendants therein for contempt in refusing to appear and tell the truth, as witnesses in said cause.

That said Moran, Mayer & Meyer obtained said order and injunction by fraud and concealment of the truth, viz: that no notice had been given, and of the other facts above stated, and that the prior and paramount jurisdiction was in the said State Court, and that your respondent was simply proceeding to maintain the justice of the charges in said bill out of the mouth of the defendants themselves, and your respondent submits that this court had no jurisdiction or authority or power whatever over either this respondent, George F. Harding, or his said attorney, A. B. Joyner, or in any manner restrain the prosecution of said State case.

Your respondent further answering denies any other allegation or fact set up, in said petition or motion, not elsewhere noticed in this answer and charges that this whole proceeding is simply a fraud upon this court effected by its officers, said attorneys, by this false petition and concealing the fact that the court had no jurisdiction whatever in the premises, and respondent alleges that it was improper that one who is not a party to the case before this Court should be restrained from enforcing his own rights in the State Court.

And this defendant further answering says that said restraining order of November 4, 1907, was and is wholly void and of no effect, because of the entire lack of jurisdiction on the part of this Honoarble Court to enter the same. And this Court has no authority or jusisdiction over this respondent in the premises, and no authority or jurisdiction to enjoin this respondent or his said attorney, A. B. Joyner, from further prosecuting said suit in said State Court and no authority or jurisdiction to order this respondent or said Joyner, to dismiss said suit, and by this answer this defendant does not intend to submit himself to the jurisdiction of this Court, in the premises, but denies the same. Further this respondent saith not.

GEORGE F. HARDING.
Respondent.

Affidavit of George F. Harding.

State of Illinois, } ss.
County of Cook. }

George F. Harding, being first duly sworn, states on
111 his oath that he is the respondent whose name is subscribed to the foregoing answer; that he has read the said answer, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be on information and belief and as to those matters, be believes them to be true.

Further affiant saith not.

Dated Chicago, November 11, 1907.

GEORGE F. HARDING.

Subscribed and sworn to before me this 11th day of November, A. D. 1907.

ANNA M. JOHNSTON,
(Seal) *Notary Public.*

112 ANSWER OF A. B. JOYNER.

United States of America, }
Northern District of Illinois, } ss.
Eastern Division. }

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company, *vs.* The Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. E. Matthiessen, C. L. Glass, W. J. Calhoun, E. A. Matthiessen, Norman B. Ream, Joy Morton, William W. Heaton, W. T. Gorman, T. G. Waggoner, T. P. Kingsford, H. G. Herget, F. C. Sherwood, E. T. Bedford, and J. B. Greenhut,	In Chancery, No. 28695.

Albert B. Joyner for answer to the said rule above referred to in the answer thereto made by the said George F. Hard-

ing, hereby adopts the said answer of the said Harding as his own answer to the said rule, and this respondent further answering the said rule says that he has no connection with any of the said matters or with any of the said proceedings or any relation thereto except as the attorney and solicitor of the said Harding, and not otherwise. Further this respondent saith not. Answer of A. B. Joyner, filed Nov. 12, 1907.

ALBERT B. JOYNER,
Respondent.

State of Illinois, }
County of Cook. } ss.

Albert B. Joyner, being first duly sworn, states on his oath that he is the respondent whose name is subscribed to the foregoing answer; that he has read the said answer, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be on information and belief and as to those matters, he believes them to be true. Further affiant saith not. Dated Chicago, November 11, 1907. Affidavit of A. B. Joyner.

ALBERT B. JOYNER,

Subscribed and sworn to before me this 11th day of November, A. D. 1907.

ALICE WILLNER,
(Seal) *Notary Public.*

(Endorsed) Filed Nov. 12, 1907, at 10 o'clock a. m. H. S. Stoddard, Clerk.

113 And on to-wit: the twelfth day of November, being one of the days of the regular July Term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of Nov. 12, 1907.

114 ORDER OF NOV. 12, 1907.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,
In and for the Northern District of Illinois,
Eastern Division Thereof.

Tuesday, November 12, 1907.
Present, Hon. Kenesaw M. Landis, District Judge.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } No. 28,695.

Upon reading and considering the petition of the Corn Products Refining Company, one of the defendants herein, filed herein on November 4th, 1907, and the exhibits thereto, and the answer this day filed herein of George F. Harding to said petition; and upon considering the records and files herein and the oral evidence given by and the statements of George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, now here made in open court; and after hearing the arguments made on behalf of said petitioner by its solicitor, Levy Mayer, and made on behalf of said George after hearing the arguments made on behalf of said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, by said George F. Harding and William J. Ammen; and the court being fully advised in the premises, and there being now present in open court the said petitioner, by its said solicitor, and the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, in person, and by their said solicitors, George F. Harding and William J. Ammen;

115 It is hereby ordered, that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner be, and they and each of them are hereby ordered to show cause by November 13th, 1907, at 10 o'clock in the forenoon of said day, why they and each of them should not be attached for contempt of this court for violating the temporary stay and restraining order entered herein on June 8th, 1907.

116 And on to-wit, the thirteenth day of November, 1907, come George F. Harding, Sr., by his solicitor and filed in the clerk's office of said Court his certain Answer in the Matter of the Rule entered on November 12, 1907, to show cause why he should not be attached for contempt of said court for violating the temporary stay and restraining Order entered in said cause on June 8, 1907. Said Answer is in the words and figures following to-wit:

Answer of George F. Harding, Sr., filed Nov. 13, 1907.

ANSWER OF GEORGE F. HARDING, SR., IN THE MATTER OF THE RULE ENTERED ON NOVEMBER 12, 1907.

117 United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } No. 28,695.

In the matter of the rule entered on November 12, 1907, in the above entitled cause, that George F. Harding, George F. Harding, Jr., William J. Ammen, and A. B. Joyner, show cause why they should not be attached for contempt of said court for violating the temporary stay and restraining order entered in said cause on June 8, 1907.

To the Honorable, the Judges of said Court, in chancery sitting:

This respondent, George F. Harding, Sr., one of the persons named in the said rule above referred to, for answer thereto, respectfully submits and states to the Court the following, namely:

1. This respondent hereby refers to the answer filed by this respondent in the above entitled cause on November 12, 1907, to the rule entered in said cause on November 4, 1907, and this respondent asks leave to make his said former answer

Answer of George F. Harding, Sr., filed Nov. 13, 1907.

a part of this, his present answer, and, to that end, this respondent refers to and adopts the same as a part of this answer, and this respondent states that his said former answer was and is true as stated in his affidavit thereto and states the essential fact required to how the truth touching this alleged contempt.

2. This respondent is advised and informed and believes, and so states the fact to be, that this respondent has not violated any order of this Court, or committed any contempt of this Court, and, certainly, this respondent has not knowingly or intentionally violated any order of this Court, either directly or indirectly, or knowingly or intentionally, been guilty of any contempt of or even any disrespect towards this Honorable Court.

3. This respondent further states that the said case 118 brought by him in the said Superior Court differs from the above entitled cause, both as to the parties and as to the subject matter, as more fully shown in said former answer filed in this cause by this respondent, half of the defendants being different in the two cases, and relief being sought in said Superior Court case against a half dozen defendants not parties to the above entitled cause, though necessary parties to this respondent's said bill, they being charged by this respondent as trustees, jointly and severally, and alleged to be liable to account to this respondent, and before this Court, by reason of the offenses and wrongs charged against them in the said bill, such offenses being other than those charged in the bill in the above entitled cause, all of which will more fully appear from an inspection and comparison of the said bills of complaint now pending before this Court by removal from the said State Courts and reference to the said bills of complaint is hereby made by this respondent for greater certainty.

4. In addition to the plaintiffs in the said two cases being different, it appears form the said bills that the plaintiffs, respectively, are differently affected by a different conspiracy of different defendants, and this respondent's bill is thrice the length of the bill in this cause, and contains several times as many allegations, and scarcely one of its allegations, if any, is, in form or in substance, like any allegation or allegations in the other of said bills, as will be seen by an inspection thereof.

5. The said bill in the said Superior Court was prepared by this respondent for his own use, and in his own case,

and the allegations on their face, as printed, throughout said bill, refer to an individual as complainant, and not to any corporation, as complainant, as shown by the changes therein in ink, as, for example, on pages

6. This respondent further answering says that this respondent was so far from intending the commission of any contempt, as charged against him, that this respondent was in fact advised, and informed and believed that the said complainant corporation, had caused a notice to be served upon the defendants in the above entitled cause of its motion to dismiss the same, by leave of Court, and was prevented from presenting said motion by the absence of the Judges of
119 said Federal Court, for a considerable period, and this respondent was further advised and informed and believed that said complainant in this cause intended to ask leave of this Court to file an amended and supplemental bill herein, and still intends so to do, in due time, the delay in so doing having resulted chiefly, if not entirely, from the absence of said Judges, as this respondent is advised and informed and believes.

7. This respondent further answering says that the facts set up in his former answer in this cause, together with the facts stated in this answer, and otherwise shown to the Court, show the real animus and purpose of said defendants, namely: To delay a hearing of said Superior Court case, and prevent the taking of testimony therein, and, especially, to protect the defendants therein who had been duly served with subpoenas to appear and testify as witnesses for this respondent, and refused so to do, and said order of November 4, 1907, in this cause was obtained to prevent the punishment of said defendants for contempt of the said Superior Court in refusing to obey said subpoenas.

8. This respondent further states that one object of this respondent in filing his said bill in the said Superior Court was to obtain such testimony promptly, and because the same could not be promptly obtained before this Court, until after issue joined by all parties and delays of perhaps years resulting from this and other causes.

9. This respondent further says that he has never seen the alleged order of June 8, 1907, in this cause, or been served with a copy thereof, or with notice thereof, and this respondent knows of no intimation given to him that this Court had forbidden or restrained this respondent from filing an independent bill in the State Court, such as was filed by

Answer of George F. Harding, Sr., filed Nov. 13 1907.

this respondent in the said Superior Court case, the same being for relief against substantially different defendants, and upon an entirely different subject matter upon the part of this respondent, and upon an entirely different subject matter as related to the liability of said half dozen new defendants in said Superior Court case; and this respondent knows of no ground or reason upon which any charge 120 of contempt can be based against him, because of his having used any printed matter or written matter which might be found in any other document or bill prepared for any other party, and this respondent's alleged contempt, if this respondent can understand the same it not having been stated in any petition or motion or document or order in this cause, is only that this respondent used in said Superior Court bill a portion of a printed bill apparently intended to be used but never in fact used by said complainant in the above entitled cause.

10. This respondent further answering says that he is and has been for some time past as alleged in his said bill in the said Superior Court, the owner and holder of said stock in said Corn Products Company, free and clear from all claims of the said Chicago Real Estate Loan & Trust Company therein or thereto, his said stock being entirely separate and ditsinct from the stock of said Corn Products Company held and owned by the said Chicago Real Estate Loan & Trust Company, as alleged in its bill of complaint in the above entitled cause, and this respondent's said bill in the said Superior Court was filed by this respondent for his own use and benefit as the holder and owner of such stock, and without any understanding or collusion or agreement whatsoever between this respondent, or any one representing this respondent, and the said Chicago Real Estate Loan & Trust Company, or any one connected with or representing that Company, and this respondent is advised and believes and so states the fact to be that this respondent had and has the right to prosecute his said suit, and that the said order of June 8, 1907, did not and does not and was not intended to restrain this respondent, or anyone acting for him, from beginning and prosecuting such suit and at no time did it occur to the mind of this respondent, for a moment, that the beginning or prosecution of such suit would or could be or be construed as a violation of said order of June 8, 1907, or as a contempt to any extent whatsoever or in any sense whatsoever of this Honorable Court.

Answer of George F. Harding, Sr., filed Nov. 13, 1907.

11. The said bill filed in the said Superior Court was prepared entirely by this respondent, and filed, personally, by this respondent, the said A. B. Joyner, having, in this particular case, had nothing to do with the preparation thereof, except some informal suggestions to this respondent in regard to the same, and this respondent in fact acted as his own
121 attorney and solicitor in the preparation and filing of said bill, and should have signed the same as the chief solicitor or counsel in said cause, and his ommission so to do was not by design but from forgetfulness or inadvertence only.

12. The said bill in the said Superior Court was prepared by this respondent at the home of this respondent's son, George F. Harding, Jr., in Chicago, during a period of some months just preceding the filing of the same, and, during that period, this respondent, and his said son frequently talked together with reference to the above entitled cause, and, in a general way, as to the general features, of the bill then being prepared by this respondent, and in the course of such interviews, this respondent, while insisting upon his independent rights and his purpose of filing an independent bill, discussed with the said George F. Harding, Jr., as his father and friend, but not as his solicitor or counsel, or as solicitor or counsel for said Chicago Real Estate Loan & Trust Company, the best course to be pursued in the above entitled cause, leaving to the said George F. Harding, Jr., however, as the president and manager of said Chicago Real Estate Loan & Trust Company, the control of its affairs free from any dictation or interference by this respondent, this respondent at the same time acting in his own interest, individually, as the independent owner and holder of stock in the said Corn Products Company, as above set forth, and the said George F. Harding, Jr., in fact had nothing whatever to do with the beginning or prosecution of the said suit in the said Superior Court, and neither did the said William J. Ammen, have anything whatsoever to do with the beginning or prosecution of the said last named suit, at any time, or in any way, although this respondent, conferred more than once with said Ammen as the attorney and representative of the said Chicago Real Estate Loan & Trust Company, in reference to such proper uses as might be made by that Company of the new facts discovered by this respondent or of the general features of the bill in course of preparation by this respondent and afterwards filed by this respondent in said Superior Court case, but, at no time, was there any intima-

Answer of George F. Harding, Sr., filed Nov. 13, 1907.

tion or suggestion between this respondent and said Ammen as to any possible violation or evasion of any order of
122 this Court, or in relation to any contempt of this Court, and this respondent, at all times, explicitly informed said Ammen that the stock of said Corn Products Company, claimed by this respondent, was entirely separate and distinct from the stock of said Corn Products Company claimed by said Chicago Real Estate Loan & Trust Company, and this was and is the truth as already fully shown by this respondent.

13. This respondent further respectfully represents and states to this Honorable Court that this respondent never, knowingly or intentionally, violated the said order of June 8, 1907, or any part thereof, either in its letter or spirit, or advised or aided or abetted in any violation thereof, and this respondent has always entertained and still entertains the profoundest respect for this Honorable Court, and, particularly, for the Judge who entered the said order of June 8, 1907, and this respondent has never by act or speech, or otherwise, directly or indirectly, intentionally or voluntarily or knowingly, been guilty of any contempt of or toward this Honorable Court, or even of any disrespect of or toward this Honorable Court, and this respondent never heard or had notice of any intimation from said George F. Harding, Jr., or said Ammen, or said Joyner, of any intent or purpose to avoid or violate or evade in any way or to any extent whatsoever, any order whatsoever, of this Court.

GEORGE F. HARDING,
Respondent.

Affidavit of George F. Harding, Sr.

123 State of Illinois, }
County of Cook. } ss.

George F. Harding, Sr., being first duly sworn, states on his oath that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

Dated this November 13, 1907.

GEORGE F. HARDING.

Subscribed and sworn to before me this 13th day of November, A. D. 1907.

ALICE WILLNER,
Notary Public.

(Seal)

(Endorsed) Filed Nov. 13, 1907. H. S. Stoddard, Clerk.

124 And on to-wit, the thirteenth day of November, 1907, come William J. Ammen and filed in the clerk's office of said Court his certain answer in the matter of the rule entered on November 12, 1907. Which said answer is in the words and figures following to-wit:

Answer of Wm. J. Ammen, filed Nov. 13, 1907.

125 ANSWER OF WM J AMMEN TO SHOW CAUSE, ETC

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } No. 28,695.

In the Matter of the Rule Entered on November 12, 1907, in the Above Entitled Cause, that George F. Harding, George F. Harding, Jr., William J. Ammen, and A. B. Joyner, Show Cause why They Should Not Be Attached for Contempt of Said Court for Violating the Temoprary Stay and Restraining Order Entered in Said Cause on June 8, 1907.

To the Honorable, the Judges of said Court, in chancery sitting:

This respondent, William J. Ammen, one of the persons named in the said rule above referred to, for answer thereto, respectfully submits and states to the Court the following, namely:

1. This respondent is and has been for nearly twenty years last past an attorney at law of this Court, as well as of the State Courts of Illinois, and still is such attorney and solicitor.

2. Before the filing of the Bill of Complaint in the above entitled cause, in the State Court, this respondent, at the request of George F. Harding, Jr., as president and manager of the said complainant corporation, assisted Mr. A. B. Joy-

Answer of Wm. J. Ammen, filed Nov. 13, 1907.

ner, then and still an attorney at law in the said State Courts, in preparing the Bill of Complaint subsequently filed by the said A. B. Joyner, in said cause, in said State Court, as appears from the said Bill of Complaint now of record in said cause, reference thereto being hereby made by this respondent.

3. After the filing of the said Bill in the said State Court, this respondent had nothing further to do with the said
126 cause until a motion was made in said State Court to remove said cause to this Court, whereupon this affiant, at the request of the said president and manager of the said corporation, appeared in said cause before said State Court, and then and there assisted the said Joyner in opposing the said motion for removal of said cause, on or about the 8th day of June, A. D. 1907.

4. After the removal of the said cause to this Honorable Court, this respondent, by request of the said president and manager of said corporation, assumed entire charge and management of the said cause, as the sole solicitor and attorney of the said complainant corporation therein, and from that time to the present this respondent has had and still has the entire control and management of said cause as the attorney and solicitor of said complainant, the said A. B. Joyner not being an attorney at law authorized to practice before this Honorable Court, and the assent and concurrence of the said A. B. Joyner to this respondent's exclusive control of the said cause, as above set forth, was duly given by the said Joyner, and at no time since said removal of said cause to this Court has the said Joyner had any connection therewith, or any control thereof, as an attorney or solicitor of said complainant.

5. Soon after the said removal of said cause to this Court, this respondent advised the said president and manager of said corporation, that, in the opinion of this respondent, an amended and supplemental bill should be prepared and leave asked of this Court to file the same in said cause, in this Court; and, thereupon, said George F. Harding, Jr., informed this respondent that his father, George F. Harding, Sr., then, and still, and for many lears last past, an attorney at law, of this Court, and of said State Courts, was then engaged in the preparation of a Bill of Complaint to be filed by some stockholder of the said Corn Products Company, other than the said complainant in this cause, and that his said father had been diligently investigating the facts in relation to the

matters involved, and had discovered many facts not known to the said complainant at the time its said bill was filed in said State Court, and, thereupon, this respondent stated to the said George F. Harding, Jr., that this respondent
127 would wait until the said George F. Harding, Sr., should have completed the preparation of the said Bill of Complaint then in course of preparation by him, as above set forth, and, that, after seeing the same, this respondent would be better able to prepare an amended and supplemental bill to be filed, by leave of Court, in the above entitled cause.

6. Accordingly, this respondent waited for some weeks for the completion of the said Bill of Complaint by the said George F. Harding, Sr., this respondent having had no information or knowledge, or notice, in the meantime, as to who was to be the complainant in the said bill so prepared by the said George F. Harding, Sr.; and, on or about October 1st, 1907, or shortly prior thereto, said George F. Harding, at the request of this respondent furnished to this respondent, a voluminous document purporting to be a draft of a Bill of Complaint to be filed against said Corn Products Company, and others, as defendants, and informed this respondent that the same was the Bill of Complaint prepared by him, and this respondent upon examination thereof found that it did not appear therefrom in what Court the same was to be filed, and this respondent has no recollection now as to who was the complainant mentioned in said bill, except that respondent does recollect distinctly, and so states the fact to be, that said complainant in the above entitled cause was not mentioned as the complainant in the said bill so furnished to this respondent, and, at the same time, or about the same time, namely, on or about October 1st, 1907, or shortly prior thereto, this respondent was informed by said George F. Harding, Sr., that the said bill so prepared by him, the said George F. Harding, Sr., would be printed, or was then being printed, and thereupon this respondent further examined the said bill so furnished to this respondent, immediately, and thereupon suggested to the said George F. Harding, Jr., as the attorney and solicitor for said complainant corporation, that, the said said bill so prepared by the said Harding, Sr., might, with some changes, be used as an amended and supplemental bill in the above entitled cause, or, that the above entitled cause might be dismissed, by leave of this court, and the said bill so prepared by the said Harding, Sr., with proper changes therein, might be filed in the State Court, by

Answer of Wm. J. Ammen, filed Nov. 13, 1907.

the said Chicago Real Estate Loan & Trust Company,
128 complainant, after a proper dismissal of the above entitled cause, and thereupon the said George F. Harding, Jr., as the president and manager of said complainant corporation, to confer with said George F. Harding, Sr., as to cooperation, so far as practicable, and proper, between the said corporation and said George F. Harding, Sr., and, after such conferences, this respondent, as the attorney for said corporation, decided to take proper steps for the dismissal of the bill in the above entitled cause, and, thereupon, filed in the State Court another bill for said corporation, substantially like the bill so prepared by said Harding, Sr., with such changes therein, however, as this respondent might deem advisable as the attorney for such corporation, all of which was well known to said George F. Harding, Sr., as he, and this respondent, freely conferred together with a view of such cooperation between said Harding and said corporation as separate and distinct holders and owners of the stock of said Corn Products Company, as alleged in their said respective bills of complaint.

7. Pursuant to the said request of the said George F. Harding, Jr., and the said plan of this respondent, as above set forth, this respondent served notices in the above entitled cause to dismiss the same, but on account of the absence of the Judges of this Court this respondent was not able to present such motion, for a considerable period, and, later, the same was abandoned for the reasons hereinafter shown.

8. While this respondent was waiting for an opportunity to present said motion to dismiss said suit, as above set forth, the said copy of bill so prepared by said Harding, Sr., and so furnished to this respondent, was taken out of the hands of this respondent by said George F. Harding, Sr., for the purpose, as this respondent was then informed, of being printed, and this respondent is informed and believes, and so states the fact to be, that Abner C. Harding, a brother of said George F. Harding, Jr., and a director and stockholder of said Chicago Real Estate Loan & Trust Company, and acting for such company, caused the same to be printed, or at least some copies thereof to be printed, as a bill to be filed in the State Court, namely, the Circuit Court of Cook County, Illinois, by such corporation after the dismissal of the above entitled cause, this respondent having theretofore advised said George F. Harding, Jr., and said Abner C. Harding, that, in the opinion of this respondent, such dismissal

would be allowed by this Honorable Court, and, thus it happened, as this respondent is informed and believes, that said Bill was printed with a view of filing the same in the Circuit Court of Cook County, Illinois, by said corporation as complainant therein.

Answer of Wm. J. Ammen, filed Nov. 13, 1907.

129 9. On or about October 16, 1907, a printed copy of the said bill of the said Chicago Real Estate Loan & Trust Company was furnished to this respondent by the said Abner C. Harding, and, thereupon, this respondent advised the said Abner C. Harding, that said George F. Harding, Jr., as the president and manager of the said complainant corporation had informed this respondent, that upon further investigation and consideration, he had decided, that it would be better to apply to this Honorable Court for leave to file such printed bill, with proper changes therein, as an amended and supplemental bill, in the above entitled cause, instead of proceeding, as had been contemplated, to secure a dismissal of the above entitled cause, and thereafter to file another bill in the State Court for said Chicago Real Estate Loan & Trust Company as complainant therein, and, thereupon, the said George F. Harding, Jr., pursuant to said decision last above named stated to this respondent, requested this respondent that the copy so delivered to this respondent of the printed copies of the said bill of complaint, printed as above set forth, be revised and changed by this respondent, as this respondent, as the attorney and solicitor for said Chicago Real Estate Loan & Trust Company, might deem proper, with a view of then presenting the same to this Honorable Court with a motion for leave to file the same as an amended and supplemental bill, in the above entitled cause. And for this very purpose this respondent has since that time had and still has in his possession the said printed copy of said bill, and this respondent is now engaged, from day to day, in the revision thereof, and in making proper changes therein, for the purpose of asking leave of this court to file the same in the above entitled cause, as an amended and supplemental bill therein, at an early date.

10. This respondent further answering states that this respondent is informed and believes, and so states the fact to be, on such information and belief, that said George F. Harding, Sr., and his attorney and solicitor, A. B. Joyner, secured from the said Abner C. Harding some of the printed copies of the said bill prepared as aforesaid by the said George F. Harding, Sr., and caused to be printed, as afore-

Answer of Wm. J. Ammen, filed Nov. 13, 1907.

said, by the said Abner C. Harding, and, thereupon the said George F. Harding, Sr., and the said A. B. Joyner, as his attorney and solicitor, having first changed the said 130 printed copies by making the said George F. Harding, Sr., complainant, and otherwise changing the same as they deemed advisable, proceeded to file the same, and did file the same in the Superior Court of Cook County, Illinois, the said last named suit being General Number 263565, in said Superior Court, being the same suit subsequently removed to this Honorable Court, and to the Bill of Complaint therein, and to the Amended Bill of Complaint therein, now on file in the office of the Clerk of this Honorable Court, reference is hereby made by this respondent.

11. This respondent further answering says that said suit Number 263565 was not begun by this respondent, or by the advice or suggestion of this respondent, and this respondent is not and has never been the attorney or solicitor of or for George F. Harding, Sr., as complainant therein; but, this respondent did, as the attorney and solicitor of the said Chicago Real Estate Loan & Trust Company, meet the said George F. Harding, Sr., (pursuant to the said request of the said George F. Harding, Jr.,) and the said A. B. Joyner, in conferences in relation to the common interests of the said Chicago Real Estate Loan & Trust Company, and the said George F. Harding, Sr., as separate and independent holder of stock in the said Corn Products Company, as set forth in the said two bills of complaint now before this Honorable Court, respectfully, the date of one of such conferences being on or about October 16, 1907, and the object thereof being to determine, among other things, to what extent, if any, the said Chicago Real Estate Loan & Trust Company, and the said George F. Harding, Sr., might co-operate in securing and producing proof of their respective bills of complaint, above mentioned, or in support of the allegations thereof, and after the filing of the said bill, in the said Superior Court, another conference was had between this respondent and the same parties with the same object in view, namely, the making of the proof of the allegations in the said respective bills of complaint, and at or before each and every of such conferences, and at all other times, this respondent was informed by the said George F. Harding, Sr., and the said George F. Harding, Jr., that both the said Chicago Real Estate Loan & Trust Company, and the said George F. Harding, Sr., were

separate and distinct and independent holders of stock
131 of and in the said Corn Products Company, as alleged in the said respective bills of complaint, and had been such holders thereof as alleged in the said bills, respectively, and this respondent fully believed and still believes such information to be true, and it never occurred to the mind of this respondent, for a moment, nor was it ever suggested to this respondent, that the filing of the said bill in the said Superior Court by the said George F. Harding, Sr., as complainant therein, or by said Joyner, as his attorney therein, would, or could, by any possibility, be a violation of the letter or spirit of the said order of June 8, 1907, in the above entitled cause, or any part thereof, and, although this respondent had nothing to do with the institution of the said suit in the said Superior Court, and was not the attorney or solicitor of the said complainant therein, this respondent, further answering, respectfully represents to this Honorable Court that this respondent, if it had occurred or been suggested to this respondent that the bringing of said suit in said Superior Court would or could have been, by any possibility, a violation of the said order of June 8, 1907, or a contempt of this Honorable Court, this respondent would have instantly and persistently advised against and protested against the bringing of the same. And this respondent respectfully represents and states to this Honorable Court that this respondent never, knowingly or intentionally, violated the said order of June 8, 1907, or any part thereof, either in its letter or spirit, or advised or aided or abetted in any violation thereof, and this respondent has always entertained and still entertains the profoundest respect for this Honorable Court, and, particularly, for the Judge who entered the said order of June 8, 1907, and this respondent has never by act or speech, or otherwise, directly or indirectly, intentionally or voluntarily or knowingly been guilty of any contempt of or toward this Honorable Court, or even of any disrespect of or toward this Honorable Court; and this respondent further answering the said rule represents and states that this respondent is informed and believes, and so states the fact to be on such information and belief, that the said George F. Harding, Sr., and the said George F. Harding, Jr., and the said A. B. Joyner, respectively, during the entire period embraced within this answer, have entertained and still entertain the
132 same feelings as those above set forth on the part of this respondent, and never, intentionally or knowingly,

Answer of Wm. J. Ammen, filed Nov. 13, 1907.

violated the said order of June 8, 1907, or any part thereof, either in letter or spirit, directly or indirectly, by word or act, or knowingly, or intentionally, were guilty of any contempt of or disrespect towards this Honorable Court, and this respondent never heard any suggestion or intimation from any of them of any intent or purpose to avoid or violate or evade in any way, any order of this Court whatsoever.

WM. J. AMMEN,
respondent.

Affidavit of Wm. J. Ammen.

State of Illinois, }
County of Cook. } ss.

William J. Ammen, being first duly sworn, states on his oath that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

Dated this November 13, 1907.

WM. J. AMMEN

Subscribed and sworn to before me this 13th day of November, A. D. 1907.

ALICE WILLNER,
(Seal) *Notary Public*

(Endorsed) Filed Nov 13, 1907 H. S. Stoddard, Clerk.

133 And on to-wit: the thirteenth day of November, 1907, come A. B. Joyner, and filed in the clerk's office of said Court in said entitled cause his certain answer in the matter of the rule entered on November 12, 1907, in words and figures following to-wit:

134 ANSWER OF A. B. JOYNER

Answer of A. B. Joyner, filed Nov. 13, 1907.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } No. 28,695.

In the Matter of the Rule Entered on November 12, 1907, in the Above Entitled Cause, that George F. Harding, George F. Harding, Jr., William J. Ammen, and A. B. Joyner, Show Cause why They Should Not Be Attached for Contempt of Said Court for Violating the Temporary Stay and Restraining Order Entered in Said Cause on June 8, 1907.

To the Honorable, the Judges of said Court, in chancery sitting:

This respondent, Albert B. Joyner, one of the persons named in the said rule above referred to, for answer thereto, respectfully submits and states to the Court the following, namely:

1. This respondent is and has been for some years last past an attorney at law in the several Courts of the State of Illinois, duly licensed to practice therein, but this respondent has never been admitted or licensed to practice in or before this Honorable Court.

2. This respondent has read the answers of George F. Harding, Sr., George F. Harding, Jr., and William J. Ammen, to the said rule of November 12, 1907, in the above entitled cause, and this respondent knows the contents of the said respective answers, and in so far as the same purport to relate to this respondent, or to any action or conduct or intent or purpose or motive or feeling of this respondent, the said several answers are true of this respondent's own knowledge, and as to all the other matters and things set forth in the said respective answers, this respondent is informed and

Answer of A. B. Joyner, filed Nov. 13, 1907.

believes, and upon such information and belief states, that the same are true as therein stated, and this respond-
135 ent adopts the said several answers as a part of this answer of this respondent to the said rule.

3. This respondent further answering says that just before the filing of the said bill in the said Superior Court this respondent was advised by the said George F. Harding, Sr., and also by the said George F. Harding, Jr., the president and manager of the said Chicago Real Estate Loan & Trust Company, that said last named company, and said George F. Harding, Sr., were then and for some years last past had been, separate and distinct and independent holders and owners of stock in the said Corn Products Company, as alleged in the said respective bills of complaint now pending before this Honorable Court, and this respondent before and at the time of the beginning of the said suit in the said Superior Court, and ever since, believed, and still believes, such information to be true, and it never occurred to the mind of this respondent, at any time, nor was it ever suggested to this respondent, that the beginning or prosecution of the said bill in the said Superior Court would, or could, by any possibility, be or be construed as a violation of the letter or spirit of the said Order of June 8, 1907, or any part thereof, or a contempt of this Honorable Court, and this respondent, never, knowingly or intentionally, violated the said Order of June 8, 1907, or any part thereof, either in its letter or spirit, or advised any violation thereof, or aided therein, and this respondent never, by act or speech, or otherwise, directly or indirectly, intentionally or voluntarily, or knowingly, was guilty of any contempt of or toward this Honorable Court, or even of any disrespect of or toward this Honorable Court; and this respondent further answering the said rule represents and states that this respondent is informed and believes, and so states the fact to be on such information and belief that the said George F. Harding, Sr., and the said George F. Harding, Jr., and the said William J. Ammen, respectively, have at all times entertained and still entertain the same feelings as those above set forth on the part of this respondent, and never, intentionally or knowingly, violated the said Order of June 8, 1907, or any part thereof, either in its letter or spirit, directly or indirectly, by
136 word or act, or knowingly or intentionally, were guilty of any contempt or of disrespect toward this Honorable Court, and this respondent never heard any suggestion or

intimation from any of them of any intent or purpose to avoid or violate or evade in any way any order of this Court whatsoever.

ALBERT B. JOYNER.

State of Illinois, }
County of Cook. } ss.

Affidavit of A. B. Joyner.

Albert B. Joyner, being first duly sworn, states on his oath that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

Datd this November 13, 1907.

ALBERT B. JOYNER

Subscribed and sworn to before me this 13th day of November, A. D. 1907.

ALICE WILLNER
(Seal) *Notary Public*

(Endorsed) Filed Nov., 13, 1907, H. S. Stoddard, Clerk.

137 And on to-wit, the thirteenth day of November, 1907, come George F. Harding, Jr., and filed in the clerk's office of said court in said entitled cause his certain answer in the matter of the rule entered on November 12, 1907. Which said answer is in the words and figures following to-wit:

Answer of Geo. F. Harding, Jr., filed Nov. 13, 1907.

138 ANSWER OF GEO F HARDING, JR

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } No. 28,695.

In the Matter of the Rule Entered on November 12, 1907, in the Above Entitled Cause, that George F. Harding, George F. Harding, Jr., William J. Ammen, and A. B. Joyner, Show Cause why They Should Not Be Attached for Contempt of Said Court for Violating the Temporary Stay and Restraining Order Entered in Said Cause on June 8, 1907.

To the Honorable, the Judges of said Court, in chancery sitting:

This respondent, George F. Harding, Jr., one of the persons named in the said rule above referred to, for answer thereto, respectfully submits and states to the court the following, namely:

1. This respondent is and has been for some years last past the president and manager and principal stockholder of the Chicago Real Estate Loan & Trust Company, the complainant in the above entitled cause, his brother Abner C. Harding also being the holder and owner of a considerable amount of the said stock of said company.

2. This respondent has read the answer of George F. Harding, Sr., William J. Ammen, and A. B. Joyner, to the said rule of November 12, 1907, in the above entitled cause, and this respondent knows the contents of the said respective answers, and, in so far as the same purport to relate to this respondent, or to any action or conduct or intent or purpose or motive or feeling of this respondent, the said several answers are true of this respondent's own knowledge, and as

to all the other matters and things set forth in the said
139 respective answers, this respondent is informed and believes, and upon such information and belief states, that the same are true as therein stated, and this respondent adopts the said several answers as a part of this answer of this respondent to the said rule.

3. This respondent further answering says that this respondent had nothing whatsoever to do with the beginning or prosecution of the said suit in the said Superior Court of Cook County, directly or indirectly, at any time, and in no way aided, by advice, or otherwise, the beginning or prosecution thereof.

4. This respondent further answering says that his father, the said George F. Harding, Sr., has not been an officer director or stockholder of the said Chicago Real Estate Loan & Trust Company at any time during seven years last past, and at no time during such period of seven years has the said George F. Harding, Sr., owned or controlled any of the capital stock whatsoever of the said last named company, or nominated or controlled any of the officers or directors thereof, the total stock of the said company being $250,000; and it is not true that said last named Company has ever been used, directly or indirectly, as a cloak or shield for the concealment of any property or effects of said George F. Harding, Sr., or to evade the payment of any allowance or maintenance or alimony to the wife of the said George F. Harding, Sr., or as a device to secrete the property or belittle the amount of the effects of said George F. Harding, Sr., or for any other wrongful or fraudulent or dishonorable purpose whatsoever, and all charges to the contrary are wholly untrue.

5. This respondent further answering says that the stock of said Corn Products Company owned and held by the said Chicago Real Estate Loan & Trust Company, and said George F. Harding, Sr., as set forth in their respective bills of complaint, aforesaid, is not the same stock and never has been the same stock, in whole or in part, but is and always has been separate and distinct and independent stock held by the said respective holders thereof, separately, distinctly, and independently.

140 6. This respondent further answering says that this respondent never, knowingly or intentionally, violated the said order of June 8, 1907, or any part thereof, either in its letter or spirit or advised any violation thereof, or aided therein,

Answer of Geo. F. Harding, Jr., filed Nov. 13, 1907.

and this respondent never, by act or speech, or otherwise, directly or indirectly, intentionally or voluntarily, or knowingly, was guilty of any contempt of or toward this Honorable Court, or even of any disrespect of or toward this Honorable Court, and this respondent is informed and believes, and so states the fact to be on such information and belief, that the said George F. Harding, Sr., and the said A. B. Joyner, and the said William J. Ammen, respectively, have, together with this respondent, at all times entertained and still entertain and feel the highest respect for this Honorable Court and have not by act or speech, or otherwise, directly or indirectly, knowingly or intentionally violated the said order of June 8, 1907, or any part thereof, or been guilty of any contempt or disrespect toward this Honorable Court, and this respondent never heard any intimation or suggestion from said Harding, Sr., or said Joyner or said Ammen of any intent or purpose to avoid or violate or evade in any way any order of this Court whatsoever.

This respondent having now fully answered the said rule, as this respondent is advised and believes, prays that the said rule may be discharged by order of this Honorable Court, and this respondent will ever pray, etc.

GEORGE F. HARDING, JR.,
Respondent.

Affidavit of Geo. F. Harding, Jr.

State of Illinois, }
County of Cook. } ss.

George F. Harding, Jr., being first duly sworn, states on his oath that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

Dated, Chicago, November 13, 1907.

GEORGE F. HARDING, JR.

Subscribed and sworn to before me this 13th day of November, A. D. 1907.

THOMAS V. SELL,
Deputy Clerk, U. S. Circuit Court, Nor. Dist. of Ills.

(Endorsed) Filed Nov. 13, 1907, H. S. Stoddard, Clerk.

141 And on to-wit: the thirteenth day of November, being one of the days of the regular July term of said court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit: Order of Nov. 13, 1907.

ORDER OF NOVEMBER 13, 1907.

Chicago Real Estate Loan and Trust Co.
vs.
Corn Products Company, *et al.* } 28695.

Now come the parties by their solicitors and thereupon said respondents, George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen file their answers to the rule to show cause why they should not be adjudged in contempt and the court, having heard arguments of counsel to conclusion and not being sufficiently advised in the premises, takes time to consider with leave to file brief by ten o'clock on Monday morning next.

142 And on to-wit: the thirteenth day of December, being one of the days of the regular July term of said court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Decree of Dec. 13, 1907.

143 ORDER OF DEC. 13, 1907.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Eastern Division Thereof.

In Equity.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } No. 28,695.

This day comes on to be heard the motion of the defendant, Corn Products Refining Company, entered of record herein November 4, 1907, for an injunction restraining the prosecution of the suit of George F. Harding vs. Standard Oil Company, of New Jersey, Corn Products Refining Company, *et al.*, filed in the Superior Court of Cook County, Illinois, on or about October 19th, 1907, and bearing General Number therein 263,565, and for an order to compel the dismissal of said last described suit; and there also now coming on to be heard the rule entered herein on November 12th, 1907, against George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, to show cause why they and each of them should not be attached for contempt of this court for violating the restraining order entered herein on June 8, 1907; and the court having heard and considered the answers to said rule, filed herein on November 13th, 1907, by said

144 George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and having considered the petition of said Corn Products Refining Company, filed herein on November 4th, 1907, and the exhibits thereto, and all the records and files herein, and all the oral evidence given by and statements of said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner in open court; and the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner being now

present in open court, in person, and being also represented by said George F. Harding and William J. Ammen, as their solicitors; and the court having heard the arguments of Levy Mayer, Esq., solicitor for said petitioner, and of said solicitors for said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and being now fully advised in the premises: Decree of Dec. 13, 1907.

The Court finds that by the institution of said suit of George F. Harding vs. Standard Oil Company, of New Jersey, *et al.*, the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner have, and each of them has knowingly and wilfully violated the order of this court, entered herein on June 8th, 1907, but the court of its own motion hereby discharges the said rule of November 12th, 1907, for contempt, without the infliction of any punishment on any of the said respondents to said rule; and

The Court further finds that the further prosecution of said suit of George F. Harding vs. Standard Oil Company, of New Jersey, *et al.*, and the institution by said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, of any action like or similar to the present cause should be enjoined.

145 Wherefore, the premises considered, it is hereby ordered, adjudged and decreed that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solicitors and representatives be, and they hereby are, jointly and severally, restrained and enjoined until the further order of this court, from further prosecuting or taking any steps or proceedings of any kind in said case of George F. Harding vs. Standard Oil Company, of New Jersey, Corn Products Refining Company, *et al.*, which was instituted in the Superior Court of Cook County, Illinois, on October 19th, 1907, and was numbered therein 263,565, and which case was subsequently docketed in and is now pending in this court as case numbered 28,865.

It is hereby further ordered, adjudged and decreed that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solicitors and representatives be, and they hereby are, jointly and severally, restrained and enjoined, until the further order of this court, from in any manner whatsoever, either directly or indirectly, instituting

Decree of Dec. 13, 1907.

or prosecuting, or causing or inspiring to be instituted or prosecuted, in any court, forum, place or jurisdiction whatsoever, any other suit, action or proceeding making charges and seeking relief like or similar to the charges contained and the relief sought in the case herein of Chicago Real Estate Loan & Trust Company against said Corn Products Company, *et al.;* but said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, jointly
146 or severally, by an appropriate proceeding or petition, and upon a proper showing, may apply to this court for leave to intervene herein or become parties hereto; and

It is further hereby ordered that that part of said motion of said defendant, Corn Products Refining Company, seeking an order compelling the dismissal of said suit of George F. Harding vs. Standard Oil Company, of New Jersey, *et al.,* be, and the same hereby is continued and reserved for the future consideration of this court, and to this order and decree, and every part thereof, the said George F. Harding, and A. B. Joyner, George F. Harding, Jr., and Wm. J. Ammen, jointly and severally, object and except, denying and objecting to the jurisdiction of the court, and they, and each of them are hereby granted thirty days from this date within which to present to this court a certificate of evidence to be signed and filed and made a part of the record herein.

147 And on to-wit: the twenty-sixth day of December, 1907, come the complainant in said entitled cause by its solicitor and filed in the clerk's office of said Court its certain Motion Marked Motion No. 1 to dismiss bill. Which said Motion is in the words and figures following to-wit:

148 MOTION NO. 1 TO DISMISS BILL.

Motion No. 1 to dismiss bill, filed Dec. 26, 1907.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } In Equity. No. 28,695.

Motion No. 1 to dismiss bill.

Now comes said complainant, by William J. Ammen, its solicitor, herein, and, having heretofore, namely, on October 1, 1907, filed herein its motion in writing to dismiss its bill of complaint herein, without prejudice, and without prejudiec to the right of Cross-complainant to prosecute his Cross-bill filed herein, said complainant now moves the Court to grant its said motion herein, and dismiss its said Bill of Complaint herein, without prejudice, and without prejudice to the right of said Cross-complainant to prosecute his said Cross-bill herein.

WM. J. AMMEN,
Solicitor for said Complainant.

(Endorsed) Filed Dec. 26, 1907, H. S. Stoddard, Clerk.

149 And on to-wit: the twenty-sixth day of December, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of Dec. 26, 1907, overruling Motion No. 1.

ORDER OF DECEMBER 26, 1907, OVERRULING MOTION NO. 1 TO DISMISS BILL, ETC.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

Now come the parties by their solicitors and now comes on to be heard the written motion of said complainant marked Motion No. 1, to dismiss bill of complaint herein, without prejudice, and without prejudice to the right of said cross-complainant to prosecute said cross bill of complaint herein, and the court, having heard said motion and being now fully advised in the premises, overrules and denies the same.

Motion No. 2 to dismiss bill, filed Dec. 26, 1907.

150 And on to-wit: the twenty-sixth day of December, 1907, come the complainant in said entitled cause by its solicitor and filed in the clerk's office of said Court its certain Motion Marked Motion No. 2 to dismiss bill. Which said Motion is in words and figures following to-wit:

151 MOTION NO. 2 TO DISMISS BILL.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } In Equity. No. 28,695.

Motion No. 2 to dismiss bill.

Now comes said complainant, by William J. Ammen, its Solicitor herein, and, (without waiving its objection or excep-

tion to the action of the Court in denying its written motion filed in said cause to dismiss its Bill of Complaint herein, without prejudice, and without prejudice to the right of Cross-complainant to prosecute his Cross-bill herein), now moves the Court to dismiss its said Bill of Complaint herein, at the cost of said complainant in said original bill. Motion No. 2 to dismiss bill, filed Dec. 26, 1907.

WM. J. AMMEN,
Solicitor for said Complainant.

(Endorsed) Filed Dec. 26, 1907, H. S. Stoddard, Clerk.

152 And on to-wit: the twenty-sixth day of Deecmber, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit: Order of Dec. 26, 1907, overruling motion No. 2.

ORDER OF DECEMBER 26, 1907, OVERRULING MOTION NO. 2, TO DISMISS BILL, ETC.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

Now come the parties by their solicitors and now comes on to be heard the written motion of said complainant marked Motion No. 2 to dismiss the bill of complaint herein without prejudice to the right of cross complainant to prosecute his cross bill herein; and the court, having heard said motion and being now fully advised in the premises, overrules and denies the same.

153 And on to-wit: the twenty-sixth day of December, 1907, come the complainant in said entitled cause by its solicitors and filed in the clerk's office of said court its certain marked Motion No. 3 to dismiss bill.

Which said motion is in the words and figures following to-wit:

Motion No. 3 to dismiss bill, filed Dec. 26, 1907.

154 MOTION NO. 3 TO DISMISS BILL.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.*
} In Equity. No. 28,695.

Motion No. 3 to dismiss bill.

Now comes said complainant, by William J. Ammen, its Solicitor herein, and, (without waiving its objection or exception to the action of the Court in denying its motion herein to dismiss its bill of complaint herein, without prejudice, and without prejudice to the right of cross-complainant to prosecute his Cross-bill herein, and without waiving its objection or exception to the action of the Court in denying its motion herein to dismiss its said Bill of Complaint, at the cost of said complainant in said original bill), now moves the Court to dismiss its said Bill of Complaint, at the cost of said complainant in said original bill, without prejudice to the right of said cross-complainant to prosecute his cross-bill herein.

WM. J. AMMEN,
Solicitor for said Complainant.

(Endorsed) Filed Dec. 26, 1907, H. S. Stoddard, Clerk.

155 And on to-wit: the twenty-sixth day of December, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

ORDER OF DECEMBER 26, 1907, OVERRULING MOTION NO. 3, TO DISMISS BILL, ETC. Order of Dec. 26, 1907, overruling Motion No. 3.

Chicago Real Estate Loan & Trust Company,
vs.
Cohn Products Company, *et al.* } 28695.

Now come the parties by their solicitors and now comes on to be heard the written motion of said complainant marked Motion No. 3 to dismiss said bill of complaint at the cost of said complainant in said original bill, without prejudice to the right of said cross complainant to prosecute his cross bill herein; and the Court, having heard said motion and being now fully advised in the premises, overrules and denies the same.

156 And on to-wit: the twenty-sixth day of December, 1907, come the complainant in said entitled cause by its solicitor and filed in the clerk's office of said court its certain motion marked Motion No. 4 to dismiss the bill. Which said motion is in the words and figures following to-wit: Motion No. 4. to dismiss bill, filed Dec. 26, 1907.

157 MOTION NO. 4 TO DISMISS BILL.

United States of America,
Northern District of Illinois,
Eastern Division. } ss.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } In Equity. No. 28,695.

Motion No. 4 to dismiss bill.

Now comes said complainant, by William J. Ammen, its Solicitor herein, and, (without waiving its objection or excep-

Motion No. 4 to dismiss bill, filed Dec. 26, 1907.

tion to the action of the Court in denying its motion herein to dismiss its Bill of Complaint herein, without prejudice, and without prejudice to the right of Cross-complainant to prosecute his Cross-bill herein, and without waiving its objection or exception to the action of the Court in denying its motion herein to dismiss its said Bill of Complaint, at the cost of said Complainant in said original bill, and without waiving its objection or exception to the action of the Court in denying its motion to dismiss its said bill of complaint, at the cost of said complainant in said original bill, without prejudice to the right of said cross-complainant to prosecute his said cross-bill herein), now moves the Court to dismiss its said Bill of Complaint, as to all defendants thereto, except Joy Morton, at the cost of said complainant, without prejudice, and without prejudice to the right of said Joy Morton, to prosecute his Cross-bill in said cause.

WM. J. AMMEN,
Solicitor for said Complainant.

(Endorsed) Filed Dec. 26, 1907, H. S. Stoddard, Clerk.

Order of Dec. 26, 1907, overruling motion No. 4.

158 And on to-wit, the twenty-sixth day of December, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

ORDER OF DECEMBER 26, 1907, OVERRULING MOTION NO. 4, TO DISMISS BILL, ETC.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

Now come the parties by their solicitors and now comes on to be heard the written motion of said complainant, marked Motion No. 4 to dismiss said bill of complaint, as to all defendants thereto, except Joy Morton, at the cost of said complainant, without prejudice and without prejudice to the right of said Joy Morton, to prosecute his cross bill in said cause, which motion is heard and denied.

159 And on to-wit: the twenty-sixth day of December, 1907, come the complainant in said entitled cause by its solicitor and filed in the clerk's office of said court its certain motion marked Motion No. 5 to dismiss the bill. Which said motion is in words and figures following to-wit: Motion No. 5. to dismiss bill. filed Dec. 26, 1907.

160 MOTION NO 5 TO DISMISS BILL.

United States of America,
Northenr District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company, *vs.* Corn Products Company, *et al.*	In Equity. No. 28,695.

Motion No 5 to dismiss Bill.

Now comes said complainant, by William J. Ammen, its Solicitor herein, and, (without waving its objection or exception to the action of the Court in denying its four former motions herein, to dismiss its bill of complaint herein, or either of them, heretofore presented by it to the Court herein), now moves the Court to dismiss its Bill of Complaint herein as against all defendants thereto, except Joy Morton, at the cost of said complainant in said original bill herein.

WM J AMMEN
Solicitor for said Complainant.

(Endorsed) Filed Dec. 26, 1907, H. S. Stoddard, Clerk.

Order of Dec. 26, 1907, overruling motion No. 5.

161 And on to-wit: the twenty-sixth day of December, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

ORDER OF DECEMBER 26, 1907, OVERRULING MOTION NO. 5 TO DISMISS BILL, ETC.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

Now come the parties by their solicitors and now comes on to be heard the written motion of said complainant, marked Motion No. 5 to dismiss the bill of complaint herein as to all defendants thereto, except Joy Morton, at the costs of said complaint in said original bill, which motion is heard and denied.

162 And on to-wit: the thirty-first day of December, 1907, come the complainant in said entitled cause by its solicitor and filed in the clerk's office of said court its certain motion for leave to file an amended bill of complaint. Which said motion is in the words and figures following to-wit:

163 MOTION FOR LEAVE TO FILE AMENDED BILL OF COMPLAINT.

Motion, filed Dec. 31, 1907.

United States of America,
Northern District of Illinois,
Eastern Division Thereof. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

in and for the Northern District of Illinois,

Eastern Division.

December Term, A. D. 1907.

Chicago Real Estate Loan & Trust Company,
Complainant,
vs.
Corn Products Company, *et al.*
Defendants.
} In Chancery. No. 28695.

Now comes the complainant in the above entitled cause, by William J. Ammen, its solicitor therein, and, without waiving, or intending to waive, its several motions, heretofore made and filed in said cause to dismiss said suit, or either or any of said motions, but still relying upon the same, respectively, together with its objections and exceptions to the action of the Court and its several orders denying the said motions, or either or any of them or any part thereof, now moves the Court for leave to file herein its Amended Bill of Complaint, in said cause, instanter, and for rule on defendants to answer said Amended Bill, which Amended Bill is now presented to the Court with this motion, together with an affidavit in support of this motion.

WM. J. AMMEN,
Solicitor for Complainant.

Affidavit of Wm. J. Ammen.

State of Illinois, }
County of Cook. } ss.

William J. Ammen, being first duly sworn, states on his oath that he is the solicitor for the complainant above named in the above entitled cause, and that the above motion for leave to file Amended Bill in said cause is not made for the purpose of vexation or delay. Further affiant saith not. Dated this 30th day of December, A. D. 1907.

WM. J. AMMEN

Subscribed and sworn to before me this 30th day of December, A. D. 1907.

ALICE WILLNER
Notary Public in and for Cook County, Illinois.

(Endorsed) Filed Dec. 31, 1907, H. S. Stoddard, Clerk.

Order of Jan. 23, 1908.

164 And on to-wit: the twenty-third day of January, 1908, being one of the days of the regular December term of said court 1907, in the record of proceedings thereof, in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

ORDER OF JANUARY 23, 1908, ENTERING APPEARANCE OF GEORGE F. HARDING AS COUNSEL.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

Now come the parties by their solicitors, and upon motion of George F. Harding leave is hereby given said George F. Harding to enter his appearance as counsel for said complainant.

165 And on to-wit, the twenty third day of January, 1908, come George F. Harding and entered his appearance as solicitor for complainant in words and figures following to-wit.

APPEARANCE OF GEORGE F. HARDING AS COUNSEL FOR COMPLAINANT.

Appearance of George F. Harding, filed Jan. 23, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

Chicago Real Estate Loan & Trust Co. *vs.* Corn Products Company, *et al.*	In Chancery 28695

Now, by leave of court, the undersigned George F. Harding hereby enters his appearance as of counsel for said complainant in the above entitled cause.

GEORGE F. HARDING.

Dec. 31, 1907.

(Endorsed) Filed Jan., 23, 1908, H. S. Stoddard, Clerk.

166 And on to-wit: the fourth day of March, 1908, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

Order of March 4, 1908.

ORDER OF MARCH 4, 1908.

Chicago Real Estate Loan & Trust Company, *vs.* Corn Products Company, *et al.*	Bill. 28695.
Joy Morton, *vs.* Chicago Real Estate Loan & Trust Company and Corn Products Company.	Cross-Bill.

Now again comes said Chicago Real Estate Loan & Trust Company, by William J. Ammen and George F. Harding, its solicitors, and all of the defendants to the original bill, who

Order of March 4, 1908.

have heretofore appeared being now in court by their solicitors, and Joy Morton, the cross-complainant herein, being also now in court by Levy Mayer, his solicitor; and the said Chicago Real Estate Loan & Trust Company now again moves to dismiss the original bill of complaint in the above cause without prejudice, and without prejudice to the right of said cross-complainant in said cause to prosecute his cross bill of complaint filed herein; and the court having heard said motion and the arguments of counsel in support of and against the same and now being fully advised in the premises, overrules and denies said motion.

Order of March 9, 1908.

167 And on to-wit: the ninth day of March, 1908, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

ORDER OF MARCH 9, 1908, DENYING MOTION TO DISMISS CROSS-BILL.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } Bill. 28695

Joy Morton,
vs.
Chicago Real Estate Loan & Trust Company, Corn Products Company, } Cross-Bill.

Now come the parties by their solicitors, and now comes on to be heard the motion of the Chicago Real Estate Loan & Trust Company, to the cross bill in the above entitled cause, to dismiss said cross-bill, because of the failure of said cross complainant to bring in the Corn Products Company, as defendant to said cross bill, either by service, subpoena or appearance; and the court having heard said motion and the arguments of counsel in support of and against the same, and now being fully advised in the premises, overrules and denies said motion.

168 And on to-wit: the ninth day of March, 1908, being one of the days of the regular December term of said court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis District Judge, appears the following entry to-wit: Order of March 9, 1908.

ORDER OF MARCH 9, 1908, DENYING MOTION OF CHICAGO REAL ESTATE LOAN & TRUST CO. TO COMPEL JOY MORTON TO BRING IN CORN PRODUCTS CO. AS CROSS DEFENDANT.

Chicago Real Estate Loan & Trust Company, *vs.* Corn Products Company, *et al.*	Bill. 28695
Joy Morton, *vs.* Chicago Real Estate Loan & Trust Company, Corn Products Company.	Cross-Bill.

Now come the parties by their solicitors, and now comes on to be heard the motion of the Chicago Real Estate Loan & Trust Company, defendant to the cross bill in the above entitled cause, to compel Joy Morton, the cross complainant, to bring in the Corn Products Company, cross-defendant, either by service or subpoena or by appearance as a defendant to said cross-bill; and the court having heard said motion and the arguments of counsel in support of and against the same, and now being fully advised in the premises overrules and denies the same.

169 And on to-wit: the ninth day of March, 1908, being one of the days of the regular December term of said court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

Order of March 9, 1908.

ORDER OF MARCH 9, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES

In and for the Northern District of Illinois

Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant.* *vs.* Corn Products Company, *et al.* *Defendants.*	Bill No. 28,695.
Joy Morton, *Cross-complainant* *vs.* Chicago Real Estate Loan & Trust Company, Corn Products Company, *Cross Defendants.*	Cross-Bill.

Now come the parties by their solicitors, and now comes on to be heard the demurrer of the Chicago Real Estate Loan & Trust Company to the cross-bill of Joy Morton herein, and the court having heard said demurrer and the arguments of counsel in support of and against the same, and now being fully advised in the premises, overrules said demurrer.

170 And on to-wit: the ninth day of March, 1908, being one of the days of the regular December term of said court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

ORDER OF MARCH 9, 1908.

Order of March 9, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES

In and for the Northern District of Illinois

Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, *et al, Defendants.*	Bill. No. 28,695.
Joy Morton, *Cross-complainant,* *vs.* Chicago Real Estate Loan & Trust Company, Corn Products Company, *Cross-defendants.*	Cross-Bill.

Now comes the Chicago Real Estate Loan & Trust Company, defendant to the cross bill of Joy Morton, in the above entitled cause, and asks leave to answer said cross-bill within fifteen days; and the court having heard said motion and being fully advised in the premises it orders that the Chicago Real Estate Loan & Trust Company answer said cross-bill within fifteen days.

171 And on to-wit: the ninth day of March, 1908, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

Order of March 9, 1908.

ORDER OF MARCH 9, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES
In and for the Northern District of Illinois
Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, *et al.* *Defendants.*	Bill. No. 28,695.

Now come the parties by their solicitors and now comes on to be heard the motion of the Chicago Real Estate Loan & Trust Company to strike from the files in said cause the affidavit of Edward T. Bedford; and the court having heard the arguments of counsel in support of and against the same, and being now fully advised in the premises overrules and denies said motion.

Order of March 9, 1908.

172 And on to-wit: the ninth day of March, 1908, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

ORDER OF MARCH 9, 1908.

IN THE CIRCUIT COURT OF THE UNITED STATES
In and for the Northern District of Illinois
Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, *et al,* *Defendants.*	Bill. No. 28,695.

Now comes the Chicago Real Estate Loan & Trust Company by William J. Ammen and George F. Harding, its so-

licitors, and all of the defendants to the original bill, who have heretofore appeared, being now in court by their solicitors, there now comes on to be heard the joint and several demurrer of C. L. Glass, William J. Calhoun, and Corn Products Manufacturing Company to said original bill, and the court having heard said demurrer and the arguments of counsel in support of and against the same, and now being fully advised in the premises sustains said demurrer and the said Chicago Real Estate Loan & Trust Company stands by its bill in said cause. Order of March 9, 1908.

173 And on to-wit: the twenty-fourth day of March, 1908, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit: Order of March 24, 1908.

ORDER OF MARCH 24, 1908 EXTENDING TIME TO ANSWER CROSS BILL OF COMPLAINT OF JOY MORTON.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

On motion of Mr. William J. Ammen, Mr. Levy Mayer being present and consenting thereto, it is ordered that the time for the cross-defendants to answer the cross bill of Joy Morton be and it hereby is extended to and including March 30, 1908.

174 And on to-wit: the thirtieth day of March, 1908, come the Chicago Real Estate Loan and Trust Company by its solicitor and filed in the clerk's office of said Court, its certain answer to the cross-bill of Joy Morton in words and figures following to-wit.

Answer to cross-bill filed March 30, 1908.

ANSWER OF CHICAGO REAL ESTATE LOAN AND TRUST CO. TO CROSS BILL OF JOY MORTON.

175 United States of America,
Northern District of Illinois, } ss.
Eastern Division, Thereof.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Eastern Division.

Chicago Real Estate Loan & Trust Company,
Complainant,
vs.
Corn Products Company, *et al.*
Defendants.
} Bill. No. 28695.

Joy Morton,
Cross-complainant,
vs..
Chicago Real Estate Loan & Trust Company and Corn Products Company,
Cross-defendants.
} Cross-Bill.

The Answer of said Chicago Real Estate Loan & Trust Company to the Said Cross-Bill of Joy Morton.

This respondent, the Chicago Real Estate Loan & Trust Company, saving and reserving to itself all right and benefit of exception to the many errors and insufficiencies and imperfections in said cross-bill, and without waiving or intending to waive its objections and exceptions to the action of the Court in overruling or denying its motions to dismiss this suit, respectively, and without intending to waive its objections or exceptions to the action of the Court in overruling its other motions heretofore presented to the Court in this cause, respectively, and, particularly, without waiving

its objection and exception to the action of the Court in
176 denying its motion that the said cross-bill be dismissed within a certain time to be fixed by the Court unless the said cross-complainant shall, within the period so fixed, bring

Answer to cross-bill filed March 30, 1908.

in the said Corn Products Company as defendant to said cross-bill by service of process or appearance, for answer to the said cross-bill, or to so much and such part thereof as this respondent is advised it is material or necessary for this respondent to answer unto, answering says:

1. Said cross-bill is not germane to the subject matter of the said original bill, and, on this ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill.

2. This cross-bill sets up merely matters of defense to the said original bill, and denies the material averments of the said original bill, and shows no ground for affirmative relief to said cross-complainant, and, on this ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill.

3. Said cross-bill is not complete in itself, but seeks aid by reference to the allegations of the said original bill, and, on this ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill.

4. Said cross-bill substantially and vitally conflicts with the answer of the said Joy Morton to the said original bill, in material particulars, as will be seen by an inspection thereof, and, for this purpose, reference is hereby made to the said answer and said cross-bill and said original bill, and, on this ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill, or on a motion to dismiss said cross-bill or strike the same from the files.

5. The said cross-bill shows no right to discovery, or other affirmative relief, but seeks relief which cannot be granted said cross-complainant in this cause, the said cross-complainant having no right in this suit to raise the question as to whether or not this respondent has acted or is acting beyond its charter powers, as an Illinois corporation, in its ac-
177 quisition and holding of stock in the said Corn Products Company, and, on this ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill.

6. The said cross-bill is defective for want of necessary parties complainant in that other stockholders of the said Corn Products Company should be made parties thereto, to the end that this respondent may be protected by whatever adjudication may be reached in this cause in relation to the

Answer to cross-bill filed March 30, 1908.

questions raised by said cross-bill, and to the end that this respondent may not hereafter be required to relitigate such questions with other stockholders of said Corn Products Company, and, on this ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill.

7. Said cross-bill is otherwise defective in that it appears from the allegations thereof that the said Corn Products Company should be made a complainant therein instead of being made a co-defendant thereto, and, on this ground, this respondent prays the same relief under this answer is it might have by or under a demurrer to the said cross-bill.

8. This respondent further answering said cross-bill admits that said Joy Morton is one of the defendants in said original Bill; that this respondent is a corporation organized and existing under and by virtue of the Laws of Illinois; that said Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, and New York Glucose Company, named as defendants in said original bill, were at the time of the filing thereof, each and all, corporations organized and existing under and by virtue of the Laws of the State of New Jersey; and that C. H. Matthiessen, C. L. Glass, William W. Heaton, Norman B. Ream, W. J. Calhoun, W. T. Gorman, T. B. Waggoner, H. C. Herget, T. P. Kingsford, F. C. Sherwood, E. T. Bedford, J. B. Greenhut, are named with E. A. Matthiessen, and said Joy Morton, as co-defendants in the said original bill of complaint, with the said New Jersey corporations above named.

9. As to the allegations of such cross-bill regarding the contents of the said original bill, this respondent denies
178 that the said cross-bill correctly, or accurately, or fairly, states the material allegations of the said original bill, and this respondent hereby refers to the said original bill and adopts the same as a part of this answer to the said cross-bill, the same as if here inserted in full, and this respondent further answering says that the allegations and matters and things stated in the said original bill are true, as therein stated.

10. This respondent further answering denies that the said Glucose Sugar Refining Company has had its name duly changed to Corn Products Manufacturing Company, within the knowledge of this respondent, and this respondent prays strict proof of that allegation in said cross-bill, and this respondent further alleges that the said Corn Products Manu-

Answer to cross-bill, filed March 30, 1908.

facturing Company, or said Glucose Sugar Refining Company, by whatever name it may be called, is, and has been for some years last past, the mere agent and representative of the Standard Oil Company, of New Jersey, as is also true of the said Joy Morton, who, with his co-defendants to said original bill, have used, the name of the Corn Products Manufacturing Company in filing the petition filed in its name in the Circuit Court of Cook County, Illinois, to remove said original cause to this United States Circuit Court, and this respondent alleges that said removal of said cause to this Court was not in compliance with the Statutes of the United States, and that this cause was not properly transferred, or rightfully transferred, to this Court, as claimed in said cross-bill, and this respondent denies the jurisdiction of this Court in this cause, and this respondent alleges that such action in removing said cause to this court was merely a step upon the part of said conspirators, the defendants in said original bill, to delay and utimately defeat justice, as hereinafter more fully shown.

11. This respondent further answering says that each and every allegation in said original bill charging said cross-complainant, and others, with creating a pool, trust, combine, and illegal monopoly, and the taking of such steps for the purpose of defrauding this respondent, and others, and so affecting the value of the said stock of the said Corn Products Company, belonging to this respondent, and others, and with attempting and threatening to transfer and divert from said Corn
179 Products Company, its business, plants, trade-secrets, and other property, and with the committing and doing of other acts charged against them in said bill, contrary to the Laws of the State of Illinois, and the Laws of the United States, are true, as stated in said original bill, and all and every of the allegations in the said original bill, charging fraud, conspiracy, and wrong-doing, on the part of the said defendants thereto, are entirely true as therein stated, and the denials thereof in the said cross-bill, and all denials in said cross-bill of the allegations in said original bill, and all denials thereof in the answer of said Joy Morton to said original bill are, respectively, and as to every part thereof, false, and untrue, and fraudulent, and meant and intended to aid the said conspiracy set forth in said original bill, in which said conspiracy said Joy Morton is and always has been since its inception, a conspicuous and leading party, as set forth in said original bill.

Answer to cross-bill, filed March 30, 1908.

12. This respondent further answering says that the Laws of the State of Illinois, and of the United States, have been, as alleged in said original bill, violated by said conspiracy, and by said conspirators, in and by the acts of the said defendants, as set forth in said original bill, and this respondent denies the statements and allegations in said cross-bill, touching the same.

13. As to the allegation in the said cross-bill that said Corn Products Company is a corporation organized under the Laws of the State of New Jersey, on February 6, 1902, with a capital stock of Eighty Million ($80,000,000) Dollars, and that Twenty-seven Million ($27,000,000) Dollars of preferred stock out of Thirty Million ($30,000,000) Dollars and Forty-five Million ($45,000,000) Dollars out of Fifty Million ($50,000,000) Dollars, of common stock, have been issued, and are outstanding, and are owned by a large number of stockholders throughout the United States, and elsewhere,—as to these allegations in said cross-bill this respondent alleges the truth to be that said Corn Products Company has been substantially destroyed, by the said defendants in said original bill, as set forth therein, and most of the stockholders of the said Corn Products Company were induced by fraudulent rep-
180 resentations of the said conspirators to surrender their stock in the said Corn Products Company, to said Corn Products Refining Company, in exchange for the latter's stock, as alleged in said original bill, the said Corn Products Refining Company having been formed and created by said conspirators to carry out and make effectual said conspiracy to defraud all the stockholders of the said Corn Products Company, other than said conspirators, as alleged in said original bill, and only your respondent's and others' stock in said Corn Products Company, aggregating less than Five Million ($5,000,000) Dollars out of the said Eighty Million ($80,000,000) Dollars of stock of the said Corn Products Company are now outstanding, all the rest having been so acquired by the said Corn Products Refining Company, by exchange for its stock, as set forth in said original bill; and the extraordinary falsity of said cross-bill appears from the fact, as shown by the affidavit of E. T. Bedford, the President of the said Corn Products Refining Company, and director of all of the other New Jersey corporations above named, filed herein, the said Bedford being the beneficiary of the said transaction and the representative of the said Standard Oil Company, the ultimate beneficiary, and the manipulator,

Answer to cross-bill, filed March 30, 1908.

through said Bedford, of the said conspiracy, and said monopoly in the manufacture of glucose, starch, and by-products in the name of said Corn Products Refining Company, as shown by the affidavit of its said president, the said Bedford, who is the "Deus ex Machina," holding office in every of the said subsidiary companies, all of which are in truth subsidiary companies of the said Standard Oil Company he, the said Bedford, being manager, as well as president, and in active control of the said factories mentioned in said bill, all of which were acquired practically for nothing by the said Standard Oil Company, but with the property of the said Corn Products Company, as set forth in the said bill, the said affidavit of the said Bedford on file herein being made by one having the fullest acquaintance with all the glucose and starch connections and affiliations of the said Standard Oil Company, the said Bedford having established for the said Standard Oil Company the complete monopoly that company now has in the manufacture and sale of said products in the United States, the said affidavit having been filed herein on November 11, 1907, and it being stated therein that he, said
181 Bedford, "is president of the Corn Products Refining Company and has been since its organization in 1906; that said Corn Products Refining Company owns 247,910 shares of the preferred stock and 438,874 shares of the common stock of the Corn Products Company; that the total number of shares of the Corn Products Company owned by the Corn Products Refining Company amount to 686,784 shares; that the Corn Products Refining Company owns 94-5/10 of the issued capital stock of the said Corn Products Company."

14. This respondent further answering says, that it further appears from the affidavit of the said Bedford that the said Corn Products Refining Company, by its ownership, as above stated, of nearly all of the capital stock of the said Corn Products Company, outside of about Five Million ($5,000,000) Dollars thereof owned by this respondent, and others not engaged in said conspiracy, as above stated, became, by said exchange of its own stock, the owner of the capital stock of the said Corn Products Manufacturing Company, as shown by the statement in the said affidavit "that the Corn Products Company is the owner of 98-9/10 of the issued capital stock of the Corn Products Manufacturing Company." So that, in effect, the said Standard Oil Company, through said Bedford and his associates of the New York Glucose Company, own and control nearly all of said so-called Corn Products

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Company; the directors thereof being chiefly Standard Oil Directors, in whose names the said Standard Oil Company has chosen to place the stock thereof, thus perpetuating the control of the said entire property so fraudulently obtained. But this respondent denies the truth of the statement in the said cross-bill touching the ownership of the said Standard Oil Company; and this respondent alleges that the money, the earnings and proceeds of said factories are, from day to day, and ever since the inception of said conspiracy, have been, sent by said obedient agents and sub-agents of the said Standard Oil Company to said Standard Oil Company, at its office, No. 26 Broadway, New York; and alleges that they, the said agents, find a fit and useful associate in Joy Morton, who has been specially selected to accomplish the end sought to be effected by the filing of said cross-bill herein, as elsewhere more fully stated in this answer.

182 15. This respondent further answering admits and alleges that this respondent, as alleged in said cross-bill, on or about February 6, 1902, purchased 450 shares of the said preferred stock and 550 shares of the said common stock, in said Corn Products Company, and acquired the same as stated in said original bill, and not otherwise, and paid therefor the par value thereof, and such purchase of the said stock was with the view, on the part of this respondent, of holding the said stock so purchased as an investment, and this respondent thereby acquired $\frac{1}{8}$ of 1% of the Eighty Million ($80,000,000) Dollars of said capital stock of the said Corn Products Company, as alleged in said cross-bill, being the said 1000 shares of said stock as alleged in the said original bill of complaint.

16. This respondent further answering says that it is not true as alleged in said cross-bill, and this respondent therefore denies that this respondent has ever threatened to or will, unless presented from so soing, vote said 1000 shares of stock at any meeting of the stockholders of the said Corn Products Company, or otherwise, or will, or can, or threatens to interfere with the management or control by said Corn Products Company of its business or property or affairs, but, on the contrary, this respondent alleges the truth to be that this respondent believed, in good faith, when it acquired said stock, and at the time it filed its said original bill herein that it had a legal right to acquire and hold and own said stock, and this respondent did not then know or believe that it could not hold such stock; as now

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decreed and found and declared by this Court, as decreed, not only by its action in overruling the demurrer of this respondent to said cross-bill, but also by the action of this Court in sustaining the demurrers filed herein by the said Glass, Calhoun, and said Corn Products Manufacturing Company, to said original bill; but it is now settled as the law of this case, by this Court, that, under the law and policy of the State of Illinois, no corporation, foreign or domestic, can hold stock in any other corporation, foreign, or domestic, as an investment, and enforce or control by proceedings in Court, or otherwise, any property rights, in the State of Illinois, either by affirming, or by protecting against attack, in the 183 Courts, any title or property-right therein or thereto, in this state, under or by virtue of such ownership of stock in such other corporation, and this respondent further answering insists that this settled rule of law is equally applicable to the said Corn Products Manufacturing Company, as a holder of stock in other corporations above named, and also to the said Corn Products Refining Company, as a holder of stock in the said Corn Products Company, and in other corporations, and this will of course effectually defeat, also, the said Standard Oil Company in its attempting to fasten and perpetuate its monopoly of glucose, starch and by-products upon the people of the United States.

17. This respondent further answering says not only that the said bill of complaint was filed in good faith upon the part of this respondent, but also with the firm and honest belief upon the part of this respondent in the truth of all the allegations of wrong-doing contained in said bill; all of which were made for the honest purpose of actually protecting the interests of this respondent as a stockholder in said Corn Products Company, and for the purpose of protecting the property, and business and affairs of the said Corn Products Company, and conserving the same, and because this respondent believed that there was then an occasion and necessity for the filing of the said bill; and this respondent denies as untrue all the allegations and insinuations in the said cross-bill to the contrary.

18. This respondent further answering says in answer to the allegations in the said cross-bill, as follow, namely:

"Said bill of complaint was filed and said proceedings instituted by said Chicago Real Estate Loan & Trust Company, as your orator is informed and believes, and therefore says, solely for the purpose of harassing and annoying said Corn

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Products Company, and its co-defendants to said bill of complaint, including your orator, and diminishing and destroying the value of the business and properties of and the shares of stock in said Corn Products Company, and its said co-defendants, Glucose Sugar Refining Co., Corn Products Refining Co. and New York Glucose Co., and to discredit said companies, and particularly said Corn Products Company, with the general public and the numerous stockholders in said defendant corporations, by praying for a receiver of said Corn Products Company, and for a reorganization thereof under the directions of the Court; that said bill of complaint was filed by said Chicago Real Estate Loan & Trust Company in the hope and with the expectation on the part of said Chicago Real Estate Loan & Trust Company that some or all of the defendants to said bill of complaint, including your orator as a stockholder and director of said Corn Products Company, would, for the purpose of protecting and conserving the business and properties of said corporation, pur-
184 chase from said Chicago Real Estate Loan & Trust Company its said 1,000 shares of stock in said Corn Products Company at some exorbitant or fabulous price many times in excess of its real value,"—as to said allegations above quoted from said cross-bill this respondent answering says that all and every of the said allegations, and every part thereof, are untrue, both in general and in detail, and have no basis whatsoever in fact or in truth.

19. This respondent further answering says as to the allegations in said cross-bill that said Joy Morton "now is and ever since the organization of said Corn Products Company has been the owner and possessor of a portion of the capital stock of said Corn Products Company, and has also, during all of said time, been and still is a director thereof, and that your orator (the said Morton) is interested in the welfare, management, business and property of said Corn Products Company, both as a stockholder therein and a director thereof"—as to these allegations last quoted from said cross-bill, this respondent answering says that the said allegations are substantially untrue; and this respondent denies the same, and puts upon said cross-complainant the burden of strict proof thereof, and every part thereof; except that this respondent admits and alleges that the said Joy Morton has been kept in the directorship of said several New Jersey Corporations subsidiary to the said Standard Oil Company, as a convenient tool of the said Standard Oil Company, for

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many years; and this respondent alleges that said Morton has been during said period, and still is, merely the agent, representative and tool of the said Standard Oil Company, of New Jersey, and of its allies the defendants, in the filing herein of the said cross-bill, which cross-bill has been filed herein by the same solicitors who appear and act for the said Standard Oil Company, and for all defendants to the said original bill herein, whether summoned or not, in this cause; and who appeared upon the transfer thereof from the state court to this court, and that the said cross-bill was thereupon prepared and filed herein by the said Morton at the instance of and for the protection of the said Standard Oil Company, and its said subsidiary corporations, and its co-conspirators in said conspiracy as alleged in the said original bill, and as more particularly alleged and set forth in a certain amended original bill of complaint filed by George F. Harding, as complainant, against the Standard Oil Com-
185 pany, and others, as defendants, in the Superior Court of Cook County, Illinois, on the 25th day of October, A. D. 1907, a true copy of which amended bill, marked "Exhibit A" to this answer is filed with this answer; and the same is hereby referred to and made a part of this answer; and this respondent alleges that all the allegations and matters and things stated in the said amended bill, as shown by said "Exhibit A," are true, as therein stated; and this respondent further answering says that the said cross-bill herein was filed herein for the sole purpose of preventing this respondent and other minority stockholders of said Corn Products Company, from defending or securing relief against the wrongs and misconducts of the said defendants to the said original bill herein, as set forth therein, and the said cross-bill has been so used ever since the same was filed herein, and the same was filed herein without justice and without reason and for no good purpose whatsoever, and has been kept pending herein for the purpose only of defeating and delaying justice, and, especially, to prevent the hearing of this cause; or to prevent the dismissal of this cause, to the end that a way might be made clear for an effective hearing of the said suit brought by the said George F. Harding, shown by said Exhibit A, and the protection therein of the said minority stockholders; and thus the pendency of said cross-bill herein has been wrongfully used by said conspirators in the procuring of an injunction against the prosecution of the said suit brought by the said George F. Harding, such

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injunction having been obtained by deceiving the Court in the premises.

20. This respondent, as to the allegations of said cross-bill, namely:

"That the value of the property, business and assets of said Corn Products Company and of your orator's interest therein as a stockholder and director thereof, have been and are diminished, impaired, and affected to the extent of more than $5,000, exclusive of interest and costs, by the filing of said bill of complaint and the prayer therein for the appointment of a receiver of the property of said Corn Products Company and for a reorganization of said company under the directions of the Court; that the precise amount of damages which said Corn Products Company and your orator severally have sustained and will sustain by the filing and prosecution of said bill of complaint by said Chicago Real Estate Loan & Trust Company cannot be definitely ascertained or measured, but as your orator verily believes and therefore says will amount to to-wit: ten thousand dollars and

186 that said Chicago Real Estate Loan & Trust Company is not financially able to adequately respond to your orator, and said Corn Products Company for such damages as have been and will be severally sustained by them, as aforesaid, and that by reason of the premises said Chicago Real Estate Loan & Trust Company should be enjoined from further prosecuting its said suit and from taking any action or proceedings as a stockholder of said Corn Products Company in any manner seeking or tending to control, regulate or interfere with any of the business or property of said Corn Products Company, or the management thereof, or from voting or asserting any rights as owner of said 1,000 shares of stock in said Corn Products Company."

—answering thereto, this respondent denies the same, and every part of the same; and this respondent further specifically answers that the property, business, and assets of the said Corn Products Company, consisted of 35 large and valuable factories and plants, and the stock of the companies operating the same, chiefly in the State of Illinois, but partly in the states of Indiana, Ohio, Iowa, and elsewhere, which had been engaged and employed in the manufacture of glucose, starch, and by-products, and also 49% of the stock of said New York Glucose Company of New Jersey, with its manufacturing business yielding large profits, said factories having cost and being then worth up to the time of said conspiracy and mis-

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conduct (of which conspiracy said Joy Morton has been the principal actor and mover as elsewhere stated in this answer and more fully stated in the said original bill, in this case, and in said bill filed by said George F. Harding above referred to), more than $50,000,000.00, and said Corn Products Company then had, also, a surplus of several millions of dollars, and a working capital of over $3,000,000.00, in addition to said surplus, and, up to January 6, 1906, and on February 28, 1906, when it was about to be destroyed by said Joy Morton, and his said allies, defendants in said original bill herein, the said Corn Products Company during its whole career from February 28, 1902, had been a most prosperous company, with its factories in the best condition, and its net earnings over $15,000,000.00, and in addition, to paying dividends upon its said stock of $80,000,000.00, it had been able to keep in perfect order and condition all its said factories until, by the action of said conspirators, and by said conspiracy, as set forth in said original bill, all its property was given away to the said Corn Products Refining Company, of New Jersey, and sought to be surrendered by the terms of the said contract, recommended and concluded by the aid
187 and influence of said Morton, at a loss of $20,000,000.00, as more fully stated in said bill herein and, especially, in said bill filed by said Harding in said second case above referred to; and said prosperous company (the said Corn Products Company) did not then owe a dollar of indebtedness, and its capital of $80,000,000.00 was then invested in said 35 factories, and in stock of the said companies, which were then worth every dollar of the said $80,000,000.00 of its said capitalization, and said company held, besides, 49% of the stock of the said New York Glucose Company with its factory, as more fully set forth in said bills aforesaid; and all this property was by the act of said Morton, and his said allies, exchanged and swapped, as above set forth, said Morton acting as director and as an individual in said transaction, for the paper, the newly created stock of the Corn Products Refining Company, a corporation organized for the purpose of said exchange, as more fully set forth in said bills. In short, said Morton and his said allies sold said property, business, and assets of said Corn Products Company long before said cross-bill was filed herein and so had nothing thereof or therein to be injured by the filing of said original bill.

21. This respondent further alleges in answer to said pre-

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tenses in said cross-bill as to the value of the business and assets and property of the said Corn Products Company, and as to the interest of said Morton therein, and the alleged injuries effected by filing said bill, or that may or will be effected, as he (said Morton) prophesies in said cross-bill, by the further prosecution of this cause, that the whole of said statement is untrue and that said Corn Products Company when this original bill was filed had no property that had not been by the action of the plaintiff in said cross-bill (and his said co-conspirators) transferred and given to a company of his own, (the said Corn Products Refining Company), and had nothing left of any value whatever, except the litigated interest of its minority stockholders, the existence of which is denied by said cross-bill; and said Morton, this respondent further answering says, was not a genuine stockholder or director of said Corn Products Company when said original bill or said cross-bill was filed, but was merely the tool and representative of the Standard Oil interests, as
188 elsewhere more fully stated, and neither he, as a stockholder, nor said Corn Products Company lost a dollar by the filing of either of said bills.

22. This respondent, further answering, says, touching "the precise amount of damages which said Corn Products Company and your orator (said Morton) severally sustained and will sustain by the filing and prosecution of said bill of complaint," which said cross-bill alleges will amount to $10,000.00 and, hence said cross-bill alleges that this respondent shall be enjoined from prosecuting this suit, and from taking any action to control, regulate or interfere with any of the business or property of said Corn Products Company or the management thereof, or even from voting or asserting any rights as owner of said 1000 shares of stock in said company, —as to these allegations in said cross-bill, this respondent says that the said Joy Morton filed his said cross-bill (as he admits and his attorneys boast) to keep and prevent this respondent from dismissing its bill herein; and ever since said cross-bill was filed herein on June 14, 1907, and Morton through his said attorneys, has resisted the dismissal of this suit, for which dismissal this respondent has repeatedly asked and has moved for in this case, but has always been opposed and resisted by said defendants to said original bill, including said Morton, and their attorneys; that such orders of dismissal, for which this respondent asked, ought to be given every one of them as asked; but were erroneously denied

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nder color of the alleged rights of the said Joy Morton as ained by the filing of said cross-bill, and for no other reason.

23. This respondent further answering says that said Joy Morton, who asks damages that he alleges in said cross-bill ill be sustained by the prosecution of this suit, knew when aid cross-bill was filed and when said original bill herein was led in the State Court that the said original bill could not e maintained by reason of the said law of Illinois, as re-ently announced by the Supreme Court of Illinois, which act was, however, wholly unknown to this respondent; and aid Morton was bound, in good faith, at all times, upon the iscovery of this truth, to permit the dismissal of this suit; ut, instead, has schemed to prevent such dismissal, in the nterests of said Standard Oil Company, of New Jersey, which company has used this suit, through the agency 89 of said Morton, and his co-defendants, to delay and cheat justice in the premises; and this respondent alleges that his action of said Morton, and his co-defendants, has been, nd is, in equity, fraudulent, and, he, and they thus come into his case with unclean hands and are not entitled, in any way, o relief on their pretenses of right or justice—justice which hey have so long prevented by their own action, in every orm, and their said cunning devices already indicated in this nswer.

24. This respondent further answering says that said affi-lavit of said Bedford, and the matters which he claims to be rue, as stated in said affidavit, were thus set up and filed y said Morton and his co-defendants, under pretense of de-eating a motion by this respondent for receiver, as asked y said bill herein; and said Bedford, and said Morton, and heir said allies have resisted the motion by this respondent o strike said affidavit from the files predicated upon the filing f the same without leave of Court, under color and cover f said desire and right to use the same upon the part of the aid defendants with a view to defeat such receivership, which ight be asked under said bill; but which receivership has ever been moved for, in this cause, and which they well new could never be moved for successfully, and would never e moved for, because the relief asked for by said bill could ot be had, by reason of the law as declared by this Court, o-wit: that said corporation (this respondent) could not hold aid stock in said Corn Products Company.

24½. That said Morton and his co-defendants come into his suit in equity with unclean hands, for they are guilty in

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the management of their defense of this case of the grossest injustice, in this, namely, that they have, by deceit of this Court, procured the entry of the interlocutory order of date December 13, 1907, herein, by which order all the stockholders of the Corn Products Company who have been robbed by the Standard Oil Company and said co-conspirators, are denied justice, and their great offenses, as charged in the bill herein, will go unpunished and, worst of all, the monopoly, by said Standard Oil Company, of said necessaries of life is secured and established against the American people; for by this order no suit against the Standard Oil Company and
190 said co-conspirators can be prosecuted except by becoming a party in this case and therefore sharing in its irremediable ruin and defeat, as already adjudged by this Court.

25. This respondent further shows, in further exposure of the said pretenses touching the prosecution of this suit and injuries effected by this suit, and to show that the same were self-inflicted, and that said Joy Morton, and his fellow defendants, knew when said cross-bill was filed that this respondent would, upon discovery of the truth touching its inability to prosecute this case, move for its dismissal, that when this respondent first knew that fact, and was assured of its inability to prosecute this case, the said defendants, including said Morton, declared to said respondent, and others, that they should resist and thereupon and ever since did resist the dismissal of this case; that this respondent moved for the dismissal of this case, and filed its motions for such dismissal of record, herein, after giving notice of its desire to dismiss the case at the first moment possible after the institution of this case and said discovery of said infirmity of said bill, to-wit: On October 1, 1907, and presented said motion to this court, and thus asked for a dismissal of this case; but said Morton resisted such dismissal, although demanded and moved for by this respondent without prejudice, as stated, in said motion on file, to said cross-bill, and without prejudice to the rights of said Morton, as cross-complainant herein; and said Morton and his co-defendants defeated the dismissal of this case on October 1, 1907; and your respondent shows that this respondent continued to move for the dismissal of this case as per said motion, and in every other form, as more fully shown by the motions filed in this case, six in number, which have been defeated by the action of said Morton, and his attorneys, who pretend to be injured by the prosecution of this case and have asked by said cross-bill, and still ask,

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that this respondent shall be enjoined from further prosecuting said suit and protecting said Standard Oil Company in the possession and enjoyment of said monopoly and the proceeds of said robbery set out in said bills.

26. And this respondent further answering says that the hollowness and absurdity of said cross-bill is further
191 shown, in its asking that this respondent shall be enjoined from taking any action or proceeding as a stockholder of said Corn Products Company, in any manner seeking or tending to control, regulate, or interfere with any of the business or property of said Corn Products Company, or the management thereof, in this, namely: that the said Corn Products Company has no property, and no business, and is engaged in no management, is substantially dead, and merely kept on foot, in name or form, for the further use of said conspirators, and said Standard Oil Company; that there are no meetings, in substance, of said company, or, if there are, nothing is involved in such meetings, and no injury could be sustained by any action of this respondent, and no attempt has been made by this respondent to take part in such meetings, or any other meetings, annual or otherwise, of said Corn Products Company; and it has never been advised of any such meetings, and believes none has been had since said destruction of said company, or since its property was transferred, as it was, to the Corn Products Refining Com-
192 pany, the agent of the Standard Oil Company, as above set forth.

27. And this respondent further answering says that the prayer and the request in said cross-bill to enjoin this respondent "from voting or asserting any rights as owner of said 1000 shares of stock in said Corn Products Company" is equally a false and deceitful request and prayer, and merely colorable, in said cross-bill, as shown by the facts set forth, and the history of this case, in which it appears that this respondent has never voted, or had any opportunity to vote, its said stock, or any part thereof, and has never asserted any rights, since said cross-bill was filed herein, to prosecute this suit but only to dismiss the same, and the danger which said cross-bill intimates of this respondent's voting or asserting any rights as owner of said stock sufficiently appears by said affidavit of said Bedford, and the facts therein stated touching the ownership by the Corn Products Refining Company of almost all the stock of said Corn Products Company, all save that of a few minority

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stockholders of said Corn Products Company, and including therein control of 99%, or thereabouts, of the entire stock of said Corn Products Manufacturing Company, all of which are claimed by said Corn Products Refining Company, in defiance of the laws of Illinois; and said Corn Products Refining Company, with the aid of said Morton, is asserting its alleged rights under said purchases of corporate stock in defiance of the laws of Illinois, as adjudged by this Court and by the Supreme Court of the state, and for the purpose of creating and perpetuating a monopoly of glucose, starch, and by-products, throughout the United States in contempt of the laws and policy of the government of the state and of the United States; and the pretended fear of said Morton lest this respondent shall vote its stock, and thus control the management of said Corn Products Company is sufficiently indicated by the fact that if this respondent were able, as this court adjudges it is not, to hold its said stock, it could then, at best, exercise only the power of $\frac{1}{8}$ of 1% of said $80,000,000 of stock of said Corn Products Company while the Corn Products Refining Company, the co-defendant of said Joy Morton, which company has possession of all the said factories and properties of the Corn Products Company, has and holds, as shown by said affidavit of
193 said Bedford, nearly 95% of said stock, or some $70,000,000.00 of the issued stock of said company, as above set forth.

28. This respondent further answering says that the prayer of said cross-bill, and the allegation therein that said Morton "is wholly without remedy in the premises except by the filing of this cross-bill" and asking a temporary injunction, forthwith, against this respondent, and this respondent "on final hearing be forever enjoined from voting or attempting to vote, directly or indirectly, at any meeting of the stockholders of said Corn Products Company, any of the said 1000 shares of stock"; and that it may be decreed that this respondent has had and now has no power to buy or hold such stock "and that the said 1000 shares of stock may be cancelled and forfeited", and that said Corn Products Company be temporarily, and forever, enjoined from permitting any of said 1000 shares of stock to be voted at any meeting, etc., and that said Corn Products Company be brought in by subpoena as a defendant to said cross-bill, are each and all fit evidence of the real character of said cross-bill, which this respondent answering says is a fitting proof

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that said cross-bill has been filed herein to effect the ends of the Standard Oil Company, and its co-conspirators, who pretend a desire to be protected by injunction, sued out from this Honorable Court against the danger lest this 1/8 of 1% of the capital stock of said company shall be allowed to interfere with such management and control and the election of directors and officers, at any meeting of said dead company, and of which said president of said Refining Company swears, by said affidavit, that it holds nearly $79,000,000.00 of the total stock of $80,000,000.00 of said Corn Products Company, and 98-9/10% of the stock of said Corn Products Manufacturing Company, and your respondent alleges that said Bedford, and his associates, own the whole of said New York Glucose Company, factories and stock, as they claim, and this respondent, so charges; and as your respondent also shows that the said Refining Company, owns, also, all the stock of the Warner Sugar Refining Company and of the St. Louis Syrup and Preserving Company,—companies organized and existing under the laws of Illinois and is in possession and control and management by its agents of every one of the 38 factories engaged in the manufacture of glucose sugar, and by-products, in the United States; and 194 it must be plain to a court of equity and this respondent answering says that every step pointed out and that will be pointed out in this answer, including the filing of said cross-bill was made merely to obtain the entering herein of the interlocutory order heretofore entered herein enjoining the further prosecution of the said suit brought by said Harding in said Superior Court and protect said Standard Oil Company and its co-conspirators against justice and proper punishment.

29. This respondent further answering says that said Joy Morton was and is the principal actor in the conspiracy of January, 1906, shown in said original bill on file in this case and especially as shown in said second bill in said second case brought by said Harding, and for the purpose of certainty the allegations in said second bill of said Harding vs. the Standard Oil Company, and others, and the statements therein wherever in conflict with the statements in the original bill in this cause, this respondent alleges are more accurate, and should control in this answer in this case; and that said Morton was one of the directors of said Corn Products Company, and combined and confederated with said Matthiessen, Ream, Heaton, Glass, Calhoun, Wagner, Herget,

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Wemble, Graham, Nichols, and Bedford, who for a long time had been officers and directors of said Corn Products Company and holders and owners of a large part of its stock, and combined and confederated together with said Standard Oil Company of New Jersey, and others, in the interest of the said Standard Oil Company in an unlawful conspiracy to cheat and defraud this respondent as a holder of its said stock, and all other holders and owners of the stock of the Corn Products Company not parties to said conspiracy, and undertook, wrongfully to transfer the entire assets and business of said Corn Products Company to a new corporation, said Corn Products Refining Company, of New Jersey, afterwards organized and managed by said Standard Oil Company under and in pursuance of said so-called plan, which was afterwards wrongfully and unjustly carried into partial execution to the great wrong and injury of this respondent, and the other minority stockholders of said Corn Products Company, viz: said plan set out in said second bill at pages 6 and 7 of Harding vs. the Standard Oil Company, and others, made an exhibit hereto.

195 And said Morton united with said "undersigned stockholders" and appended to said plan a statement issued as a circular to the stockholders of the Corn Products Company, or some of them, stating as follows: "The undersigned stockholders, among others, have agreed to deposit stock under the foregoing plan."

(Signed)
"C. H. MATTHIESSEN.
NORMAN B. REAM.
WILLIAM W. HEATON.
JOY MORTON.
J. B. GREENHUT."

30. And this respondent alleges that the said plan was untruthful and calculated to deceive the stockholders of said Corn Products Company, to whom said Morton caused to be sent said plan with the statement that he had agreed to deposit stock under it; and this respondent alleges and charges that the essence and effect of said plan was the enforced liquidation of said Corn Products Company and chiefly for the purpose of giving to the said Standard Oil Company said monopoly of glucose, starch, and by-products, manufactured in the United States as already stated; and said plan and the division stated therein gave to said Standard Oil Company, the holder of the said stock of two and a half com-

panies, and their factories, a profit of more than $15,000,000.00 outright, and provided for the permanent ownership and monopoly of the new company by said Standard Oil Company, whose directors constituted and now constitute the majority of the directors of said company, who have held the control and management ever since; and this Plan was simply a gift and bargain by which said Morton, and his fellow directors of said Corn Products Company, including said Bedford, who were trustees of said company and of the said minority of said stockholders, sold said $80,000,000.00 of Corn Products stock for themselves and their own profit, with the gift of 40% of the capital of the company and its right to conduct its own business to the Standard Oil Company and thus and thereby paying to the Standard Oil Company and its agents $17,000,000.00 for property worth not exceeding $3,000,000.00, and said Morton urged his fellow stock-
196 holders to accept and carry out the proposition stated in said plan, by which this great loss was inflicted upon them; and that the said Corn Products Company was thereby annihilated and gave up its property and factories in Illinois and eslewhere to said Corn Products Refining Company, in the interest of said Standard Oil Company.

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31. This respondent as an effective answer to said cross-bill, further alleges that said cross-bill is the cross-bill only in name of said Joy Morton, but in truth and fact it is the cross-bill of all of the said conspirators; and hence was filed in his name only as the most convenient tool and believed by them to be for said purpose the least objectionable one of said conspirators; and when said cross-bill and the several orders in this case are examined closely it will be found that not only was this cross-bill filed to delay justice and has been used for that purpose by said Standard Oil Company and the said allies of said Morton with lavish use of four injunctions against the complainant, every one of them against the law, and obtained by deception and falsehood; but that this is a gross attempt by the said corporation which is really the owner of the whole of the Corn Products stock, or nearly so, against another corporation, the complainant,—the said Refining Company far more certainly as such monopoly is within shot of the law of the State of Illinois and its policy which forbids ownership by corporations of the stock of other corporations, for the said Corn Products Refining Company although a corporation of the State of New Jersey and claiming exemption and immunity from said law and policy of this

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state by virtue of the powers granted to it as to ownership of stock in other corporations by the charter given by the state of New Jersey, it is equally as impotent, as domestic corporations of this state, to hold said Corn Products stock and in truth comes in by said Joy Morton, its associate co-conspirator and agent, to exercise its power as unjustly claimed under the laws of New Jersey; and that such power is equally forbidden by our laws and policy from holding and enforcing rights over the real estate of said factories in Illinois, or claiming the same as given by such alleged ownership of stock which power it also seeks to exercise in this Court by this cross-bill and by the numerous injunctions and the petition shown in this record.

32. This respondent further answering represents and
197 shows unto your Honors that said Corn Products Refining Company never had and has not now any power, right, or authority, to purchase, acquire, own, hold, or possess any of the shares of stock of the said Corn Products Company or of the said Corn Products Manufacturing Company or of the said New York Glucose Company or of the said Glucose Sugar Refining Company or of the said Warner Sugar Refining Company or of the said St. Louis Syrup and Preserving Company, or to vote any of such stock at any meeting of the stockholders of said respective companies, or in any manner to direct, control, regulate, interfere with or have any voice in the business or management of any of the affairs of said Corn Products Company, or of any or all of said other companies, And this respondent further represents and shows unto Your Honors that said Corn Products Refining Company in defiance of the laws of this state bought and acquired during the year 1906, or thereabouts, in pursuance and execution of said Plan all the capital stock of all of said companies aforesaid named in said plan, and all the stock of said companies subsidiary to and claimed or held or bought and acquired by said companies; that all said stock was acquired by said Corn Products Refining Company not by way of security for, nor in payment of or on account of any obligation, indebtedness, claim or demand due or owing to said Corn Products Refining Company, but the same was purchased by said Corn Products Refining Company solely under and in pursuance of and to carry out said Plan aforesaid, and said conspiracy, and said purchases of stock were each and all obtained with the avowed purpose and intent of creating a monopoly on behalf of said Standard Oil Company

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in the business and manufacture of glucose, starch, and its by-products, as elsewhere shown more fully in this answer, and as depicted and illustrated more fully in said plan of 1906.

33. And this respondent alleges and shows that the said purchases and ownership by said Corn Products Refining Company of said stock of said several companies, and each of them, were and are, severally, ultra vires, and beyond its powers, and that said Corn Products Refining Company has no right or power to exercise any right of ownership over any of said shares of stock, or to file any of the petitions 198 filed herein or to take any other steps or proceeding as a stockholder of said several companies and each and all of them, or any of them, and especially as a stockholder of said Corn Products Company and of said Corn Products Manufacturing Company.

34. This respondent further shows unto Your Honors that the said Corn Products Refining Company claims to own or owned, when this bill was filed, and now owns, or claims to own, as the purchaser of more than 95% of the capital stock of said Corn Products Company; and the said Corn Products Company was then the nominal owner and is still the nominal owner but acquired for the use and benefit or now holds really for the use and benefit and belonging to said Corn Products Refining Company 99% of the issued capital stock of the Corn Products Manufacturing Company, which is also known by the name of the Glucose Sugar Refining Company as described in the bill herein; and the said Standard Oil Company of New Jersey in truth is the real owner of the entire capital stock and absolutely controls and manages all the property through its agents and directors of both companies last named of all the companies heretofore named in said bill including their said factories and trade secrets, market, and capital stock, of every description.

35. And this respondent further alleges and shows unto Your Honors that said Corn Products Company being the holder of the stock of the subsidiary companies of the Illinois Sugar Company organized under the Laws of the State of Illinois and having its factory at Pekin, Illinois, and of the stock of the Charles Pope Company with its two factories at Geneva, and Venice, Illinois, and of the stock of the United States Glucose Company, and of the entire stock of the National Starch Company, composed of twenty-four subsidiary starch companies and factories, to-wit: the factories known

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as Kingsford's and of Erkenbrecher's of Gilbert's and Argos and others of national reputation; that all said stocks and factories were the property of the said Corn Products Company in 1906 and were transferred to and became part of the assets of said Corn Products Refining Company by its purchase of the property and assets and stock of the Corn Products Company as hereinbefore stated in 1906 under said Plan.

And said Corn Products Refining Company never had 199 and has not now any power, right, or authority, to purchase, acquire, own, hold or possess any of said stocks or said property of said above named companies or to vote any of said stocks at any meeting of the stockholders of any of said companies or in any manner to direct, control, interfere with or have any voice in the business or management of any of the affairs of said several companies aforesaid, and its purchase and ownership of said stock was and is ultra vires and beyond its powers; and that said Refining Company has no power whatever to exercise any right of ownership over any of said stocks of said companies, or to file any of the petitions for removal of any cases against said companies, or against itself, to this Court, or any petitions in this case, if it should be deemed by its attorneys able or necessary to take any steps or proceedings as a stockholder of any of said companies aforesaid; and especially the said Corn Products Refining Company has no right or power to direct, control, regulate or interfere with or have any voice in the business or management of any of the affairs, factories or properties of any of said companies and especially of these factories and their realty in the State of Illinois as shown by this bill.

36. This respondent further represents unto Your Honors that said Corn Products Refining Company threatens to and will unless prevented from so doing by this Honorable Court vote any and all of said shares of stock in said several companies aforesaid at the meetings annually held by the stockholders of said companies, and at all other meetings of said stockholders, and interfere with the due and proper management and control by said Corn Products Company of its business and property and of the business and property, management and control of any or all of said companies aforesaid.

37. This respondent further represents unto Your Honors that said Corn Products Refining Company under and by virtue of said conspiracy and by its combination with the said officers of the said Corn Products Company has attempted

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to enter into the control of all the factories of said Corn Products Company and by its agents, officers, representatives, and tools, is engaged in attempting to control, and to the extent of said factories in Illinois owning and controlling and managing daily the greater part of the same; and that 200 under the alleged purchases of the stock of the Corn Products Company and of said companies described in the bill herein, organized and existing under the laws of the State of Illinois, and elsewhere, has placed or is now endeavoring to place the said Corn Products Manufacturing Company of New Jersey in possession of said factories in Illinois, and elsewhere, and to continue the existence and control of said Corn Products Manufacturing Company, but only as its agent, of the said factories; and the said Corn Products Manufacturing Company as such agent and representative of the Corn Products Refining Company is in the actual possession and control of the said factories in Illinois and elsewhere.

38. And this respondent alleges that the said Corn Products Manufacturing Company has been found guilty of a conspiracy to defraud and of establishing a monopoly in the manufacture and in regulating and fixing the price of glucose, grape-sugar and their products and by-products by and with said corporations aforesaid, and this is more fully shown in the case of George F. Harding and the Chicago Real Estate Loan & Trust Company in the bill filed on August 3, 1907, against said Matthiessen and the American Glucose Company and others and the said Glucose Sugar Refining Company which was then the owner or holder of the options described in said opinion as set out therein, and that by the decree of the Supreme Court of Illinois entered in said case (as shown in its opinion published in 182 Ill. pp. 551-644) the said Corn Products Manufacturing Company, then the Glucose Sugar Refining Company, was held guilty of said conspiracy to defraud the public by the creation of said monopoly under and by a fraudulent and criminal combination conducted and created by the said J. B. Greenhut, Levy Mayer, and other defendants in said bill, including said C. H. Matthiessen.

39. This respondent further shows and represents that the said Corn Products Refining Company and all of said corporations and individuals engaged in said formation of said monopoly shown in this case have made, created and organized for their purpose the said Corn Products Refining Com-

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pany, really the secret tool of the said Standard Oil Company of New Jersey and acting contrary to the public policy of the State of Illinois as declared by its statutes and de-
201 cisions of its Courts, and as shown by the constant practice of it by the government officials of the state; and in the case of the Corn Products Manufacturing Company this doctrine has been adjudicated and enforced against these very defendants and in favor of this plaintiff and said George F. Harding; and this respondent alleges that it is the "settled doctrine of this state established by many decisions of this Court" viz, of the Supreme Court of Illinois as shown in said 182 Illinois, "that foreign corporations do not come into this state as a matter of legal right, but only by comity, And That Said Corporations Are Subject to the Same Restrictions and Duty as Corporations Formed in This State and Have No Other or Greater Power"; and that this doctrine is thus declared by the Supreme Court of Illinois in said cause, where said corporations, including said defendants, were operating the same plants in Illinois under the name of the Glucose Sugar Refining Company and were found attempting to evade the common law and the statutes of Illinois against trusts and combines and to defy the public policy of the state, by going into a foreign state, in that case as in this, the State of New Jersey, and chartering a corporation in order to do business in this state in violation of its laws. That such foreign corporations and said Glucose Sugar Refining Company, now known as the Corn Products Manufacturing Company, and the other corporations, aforesaid, defendants are such violators and offenders against law and cannot come into this state to do business except when they conform to the laws and public policy of the state; and that this is more especially true in the case of real estate located in Illinois; and this respondent alleges that the real estate in this case upon which said factories are situated, is largely in Illinois "And Nothing Is Better Settled", as Declared by the Supreme Court of Illinois in Said Case of said Harding and Others Against the American Glucose Company and Others, "Than That the Validity of All Transactions Relating to Land Depends Upon the Laws of the State Where the Land is Situated"; and this respondent shows unto Your Honors that in this case it is the real estate in Illinois which is owned or claimed by these foreign corporations, which is attempted to be used for the purpose of carrying on the business of an illegal trust or combination, and as the Supreme

Court of Illinois declared in said case touching said New Jersey corporations, their New Jersey charters can give them the right to bring or hold such stock in other corporations,
202 and "Real Estate in Illinois Owned by Foreign Corporations Cannot Be Used for Such a Purpose."

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40. And this respondent answering expressly asks that said Corn Products Refining Company and Corn Products Manufacturing Company, their directors, officers, agents, attorneys, solicitors and employes, and each of them may be forever enjoined from voting or attempting to vote, directly or indirectly, at any meeting of the stockholders of said Corn Products Company or any or either of said companies any of the shares of stock so held by said companies, or any of the stocks of any of the subsidiary companies of said Corn Products Company at any meeting of the stockholders of any or all of said subsidiary companies; that it may be decreed herein that said Corn Products Refining Company and said Corn Products Manufacturing Company, and each of them had and has no power, right, or authority to deal with said real estate in the State of Illinois, and said factories in said State, nor to purchase, acquire, hold, own or possess such real estate for the purpose of such combination or said shares of stock, or any part of them, in said Corn Products Company, and that the said stock may be cancelled and forfeited, and that the said Corn Products Refining Company and the said Corn Products Manufacturing Company, and each of them, may be forever enjoined from owning, holding or possessing any of said real estate, and factories, and from using them for said purpose or purposes set out in the bill herein, or from possessing, owning or holding any shares of said stock or any part thereof or from directly or indirectly exercising or asserting any acts of ownership over the same or as a stockholder in said subsidiary companies of said Corn Products Company, or as a stockholder in said Corn Products Company or in said Corn Products Manufacturing Company, or from prosecuting said cross-bill and said petitions respectively filed herein.

41. And this respondent further answering the said cross-bill herein says that the said Joy Morton is not entitled to maintain such cross-bill herein, in any event, independent of the other objections above stated therein, for the reason that such cross-bill purports to be filed by him alone, and for himself alone and not in behalf of any other stockholders of the said Corn Products Company, and, on this additional

Answer to cross-bill, filed March 30, 1908.

ground, this respondent prays the same relief under this
203 answer as it might have by or under a demurrer to the said cross-bill.

42. And this respondent further answering says that the said Joy Morton is not entitled to maintain said cross-bill herein for the additional reason that said cross-bill is not in compliance with the equity rules of the United States, Numbered 94, perscribed by the Supreme Court of the United States at the October Term, 1881, to which reference is hereby made and the same is made a part of this answer the same as if here inserted in full, and, on this additional ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill.

43. This respondent further answering says that the said cross-bill improperly joins as co-defendants this respondent and the said Corn Products Company, it fully appearing from the said cross-bill that said Corn Products Company is interested wholly on the side of and with said cross-complainant, in the subject matter of the said cross-bill, and should, therefore, be made a co-complainant with the said Joy Morton in the said cross-bill, and not a defendant thereto and, on this additional ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill.

44. And this respondent further answering says that there is a non-joinder of proper and necessary parties complainant in said cross-bill and that the other defendants to the original bill herein are not joined as complainants in said cross-bill, or otherwise made parties to said cross-bill, and, on this additional ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill.

45. And this respondent further answering says that it does not appear from the matters and things set forth in said cross-bill that the said cross-complainant is entitled to the relief thereby sought or therein prayed for, or any part thereof, or any relief whatsoever in the premises, and, on this ground, this respondent prays the same relief under this answer as it might have by or under a demurrer to the said cross-bill.

204 46. This respondent further answering denies all the averments and matters and things contained in the said cross-bill not hereinbefore specifically answered unto.

And this respondent having fully answered the said cross-

bill prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

CHICAGO REAL ESTATE LOAN AND TRUST COMPANY,
By WM. J. AMMEN and GEO. F. HARDING,
Its Solicitor.

WM. J. AMMEN,
GEO. F. HARDING,
Its solicitor.

205 (Here follows Exhibit A., being a copy of the Amended Bill of Complaint filed in the Superior Court of Cook County on the 25th day of October, 1907, being identical with a copy set out in the Certificate of Evidence and not copied here.)

(Endorsed) Filed March 30, 1908, H. S. Stoddard, Clerk.

206 And on to-wit: the twenty-ninth day of April, 1908, come Corn Products Company by its solicitor and entered its appearance in words and figures following to-wit: Appearance of Corn Products Company, filed April 29, 1908.

APPEARANCE OF CORN PRODUCTS COMPANY AS CROSS DEFENDANT.

Northern District of Illinois,
Eastern Division thereof. } ss.
United States of America,

IN THE CIRCUIT COURT OF THE UNITED STATES
in and for the Northern District of Illinois
Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, *et al.* *Defendants.*	Bill No. 28695
Joy Morton, *Cross-complainant,* *vs.* Chicago Real Estate Loan & Trust Company and Corn Products Company, *Cross-Defendants.*	Cross-Bill.

I hereby enter the appearance of the cross defendant, Corn Products Company, as a cross defendant to the said cross-

bill of said Joy Morton, and of myself as the solicitor of said cross-defendant to said cross bill, and expressly confine said appearance of said Corn Products Company, as cross-defendant, and of myself as its solicitor, to said cross-bill.

HENRY RUSSELL PLATT,
Solicitor for cross-defendant, Corn Products Company.

(Endorsed) Filed April 29, 1908, H. S. Stoddard, Clerk.

Answer of Corn Products Company, filed April 29, 1908.

207 And on to-wit: the twenty-ninth day of April, 1908, come Corn Products Company by its solicitor and filed in the clerk's office of said Court its certain answer to the corss bill of Joy Morton in words and figures following to-wit:

ANSWER OF CORN PRODUCTS COMPANY TO CROSS BILL OF JOY MORTON.

United States of America
Northern District of Illinois, } ss.
Eastern Division thereof.

IN THE CIRCUIT COURT OF THE UNITED STATES
in and for the Northern District of Illinois,
Eastern Division.

Chicago Real Estate Loan & Trust Company, *Complainant,* *vs.* Corn Products Company, *et al.* *Defendants.*	Bill No. 28695
Joy Morton, *Cross-complainant,* *vs.* Chicago Real Estate Loan & Trust Company and Corn Products Company, *Cross-Defendant,*	Cross-Bill.

Answer of the Cross-Defendant, Corn Products Company, to said Cross-Bill of Joy Morton, Cross complainant.

The Corn Products Company, cross-defendant to said

Answer of Corn Products Company, filed April 29, 1908.

cross-bill, saving and reserving unto itself the benefit of all exception to the errors and imperfections in said cross-bill contained, for answer to so much of said cross bill as this cross-defendant is advised it is necessary or material for it to make answer unto, answering says:

1. This cross-defendant admits that it is a corporation organized under the laws of the State of New Jersey on the date and with the capital stock. consisting of the shares, of the par value and with the amount of its capital stock issued and outstanding and owned by a large number of stock-
208 holders, as alleged in said cross bill.

2. This cross-defendant has no knowledge, information, or belief, but demands proof of the allegation that said Chicago Real Estate Loan & Trust Company, on or about February 6, 1902, or at any other time, purchased 450 shares of preferred, or any other amount, or 550 shares of common, or any other amount of the capital stock of this cross-defendant, or that since or prior to said date said Chicago Real Estate Loan & Trust Company has been or still is the owner of said shares, or any part thereof, or any other shares of the capital stock of this cross-defendant; or that said 1,000 shares, or any part thereof, or any other shares of the capital stock of this cross-defendant were acquired by said Chicago Real Estate Loan & Trust Company not by way of security for, or in payment of or on account of any obligation, indebtedness, claim or demand due or owing to said Chicago Real Estate Loan & Trust Company, or were purchased by said Chicago Real Estate Loan and Trust Company solely as an investment, as alleged in said cross-bill.

3. This cross-defendant admits the allegations in said cross-bill about said cross-complainant's stock ownership and directorship and interest in this cross-defendant.

And now, having thus fully made answer to said cross-bill, or to so much thereof as it is advised it is necesasry or material for this cross-defendant to make answer unto, this cross-defendant prays to be hence dismissed with costs.

CORN PRODUCTS COMPANY,
By HENRY RUSSELL PLATT,
Its Solicitor.

HENRY RUSSELL PLATT,
Solicitor for said cross-defendant.

(Endorsed) Filed April 29, 1908, H. S. Stoddard, Clerk.

Stipulation, filed Feb. 7, 1908.

above entitled cause on the application of the Corn Products Refining Company, one of the defendants in said cause.

It is hereby stipulated by said defendant and said respondents, that the time for the settling and filing of the certificate of evidence in said cause, shall be extended and enlarged to and including the 29th day of February, A. D. 1908, and that the time for filing the transcript of record in such appeal, in the office of the clerk of the United States Circuit Court of Appeals, of the Seventh Circuit may be extended to the 7th day of March, A. D. 1908, and that a proper order or orders may be entered accordingly.

Dated this 4th day of February, A. D. 1908.

WM. J. AMMEN,
Solicitor for said Respondent.
LEVY MAYER,
Solicitor for said Corn Products Refining Company.

Enter Order,

KENESAW M. LANDIS,
Judge.

(Endorsed) Filed Feb. 7, 1908, H. S. Stoddard, Clerk.

Order of Feb. 7, 1908.

213 And on to-wit: the seventh day of February, 1908, being one of the days of the regular December term of said court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

ORDER OF FEBRUARY 7, 1908, EXTENDING TIME TO FILE CERTIFICATE OF EVIDENCE AND EXTENDING TIME TO FILE TRANSCRIPT OF RECORD IN THE CIRCUIT COURT OF APPEALS.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

Upon stipulation filed, it is ordered that the time to settle certificate of evidence herein be, and the same is, hereby extended to the 29th instant; and the time to file transcript of record in the United States Circuit Court of Appeals for this circuit be, and the same is hereby extended to March 7th, 1908.

214 And on to-wit: the twenty-first day of February, 1908, being one of the days of the regular December term of said court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit: Order of Feb. 21, 1908.

ORDER OF FEBRUARY 21, 1908, EXTENDING TIME FOR SETTLING AND FILING CERTIFICATE OF EVIDENCE AND FILING TRANSCRIPT OF RECORD IN THE CIRCUIT COURT OF APPEALS.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

Now on this day comes the parties by their solicitors and by consent of Levy Mayer, Esq., solicitor for the Corn Products Company, and Wm. J. Ammen, solicitor for the respondents, George F. Harding, *et al.*, in this cause in open court, it is hereby ordered that the time be and the same is hereby extended and enlarged to and including March 7th, 1908, for the settling and signing and filing of the certificate of evidence herein; and to and including March 14th, 1908, for the filing in the office of the clerk of the United States Circuit Court of Appeals for this circuit, a transcript of the record herein in the appeal of said respondents to said Circuit Court of Appeals.

215 And on to-wit: the fifth day of March, 1908, being one of the days of the regular December term of said court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

Order of March 5, 1908.

ORDER OF MARCH 5, 1908, EXTENDING TIME TO FILE CERTIFICATE OF EVIDENCE, ETC.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

On motion of William J. Ammen, solicitor for respondents, George F. Harding, *et al.*, Mr. Levy Mayer being present and consenting thereto, time for presenting and filing certificate of evidence extended seven days; and time for filing record in the Circuit Court of Appeals for this circuit extended seven days also.

Order of March 13, 1908.

216 And on to-wit: the thirteenth day of March, 1908, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

ORDER OF MARCH 13, 1908, EXTENDING TIME TO FILE CERTIFICATE OF EVIDENCE.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

On motion of Wm. J. Ammen, solicitor for respondents, George F. Harding, *et al.*, Mr. Levy Mayer, solicitor for the defendants, being present and consenting thereto, it is ordered that the time for presenting and filing the certificate of evidence be and the same hereby is extended to and including Monday next.

217 And on to-wit: the fourteenth day of March, 1908, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof, in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

ORDR OF MARCH 14, 1908, ORDERED THAT SETTLEMENT OF CERTIFICATE OF EVIDENCE BE CONTINUED THIRTY DAYS, ETC. Order of March 14, 1908.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

Ordered that the settlement of the certificate of evidence be continued thirty days for further hearing; the time for the respondents to file said certificate of evidence and the time for filing the record in the United States Circuit Court of Appeals for this circuit is extended forty days.

Upon motion of Mr. Levy Mayer, counsel for the respondents agreeing thereto, it is ordered that the certificate of evidence be and the same hereby is empounded with the clerk of this court.

218 And on to-wit: the twenty-first day of April, 1908, being one of the days of the regular December term of said court, 1907, in the record of proceedings thereof, in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit: Order of April 21, 1908.

ORDER OF APRIL 21, 1908, EXTENDING TIME TO FILE CERTIFICATE OF EVIDENCE ETC.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

On motion of Mr. Wm. J. Ammen, solicitor for the respondents Mr. Levy Mayer being present and not objecting thereto, it is ordered that the time to file certificate of evidence herein and the time for filing the record in the United States Circuit Court of Appeals for this Circuit be, and the same hereby is extended ten days.

Order of April 30, 1908.

219 And on to-wit: the thirtieth day of April, 1908, being one of the days of the regular December term of said Court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

ORDER OF APRIL 30, 1908, EXTENDING TIME TO FILE RECORD IN UNITED STATES CIRCUIT COURT OF APPEALS.

Chicago Real Estate Loan & Trust Company, *v* Corn Products Company, *et al.* } No. 28,695. Chancery

On motion of Mr. William J. Ammen, solicitor for the respondents, Mr. Levy Mayer being present and consenting thereto, it is ordered that the time for filing the record in the United States Circuit Court of Appeals for this circuit, he, and the same hereby is, extended ten days.

Certificate of evidence, filed April 30, 1908.

220 And on to-wit: the thirtieth day of April, 1908, there was filed in the clerk's office of said Court, in said entitled cause a certain Certificate of Evidence in words and figures following to-wit:

221 CERTIFICATE OF EVIDENCE.

United States of America, Northern District of Illinois, Eastern Division. } ss.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois

Eastern Division thereof.

Chicago Real Estate Loan & Trust Company, *vs.* Corn Products Company, *et al.* } In Chancery. No. 28695.

In the matter of the rule entered Nov. 4, 1907, that George F. Harding, and his solicitor, A. B. Joyner, show cause why

the suit of said Harding in the Superior Court of Cook County should not be enjoined, and be ordered to dismiss the same. Also, in the matter of the rule entered Nov. 12, 1907, that George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, show cause why they should not be attached for contempt for violating the temporary stay and restraining order entered on June 8, 1907.

Certificate of evidence, filed April 30, 1908

Certificate of Evidence.

Be it remembered that on November 12, 1907, being one of the judicial days of the July Term, A. D. 1907, of this Court, before the Undersigned, Kenesaw M. Landis, one of the Judges of the said Court, in chancery sitting, there came on for hearing the rule entered of record in the above entitled cause on November 4, 1907, ex parte, and without notice to or appearance by any person or party other than the Corn Products Refining Company, upon whose petition that they filed in said cause, and now on file therein, the said rule was entered, reference being hereby made to the said petition and the same being hereby made a part of this Certificate of Evidence, together with the said rule entered on and pursuant to said petition and the said George F. Harding and A. B. Joyner, mentioned in the said rule having filed their answers thereto under oath, on said date, November 12, 1907, and the said hearing of the said rule, upon the said answers thereto, having thereupon
222 proceeded, the said Corn Products Refining Company appearing by Levy Mayer, as its solicitor, and the said George F. Harding and A. B. Joyner appearing both personally and by William J. Ammen as their solicitor, for the purpose only of such hearing, and limiting their appearance to such purpose only, and respectfully objecting to and denying the authority or jurisdiction of this Court over them, or either of them, in the premises, and insisting, jointly and severally, that the entry of the said rule of November 4, 1907, against them, was and is, wholly void, by reason of the lack of authority, or power, or jurisdiction of this Court in or over them, respectively, in the premises, and thereupon the following proceedings were had on such hearing:

Mr. Mayer: Now if it pleases your Honor, a very brief statement of the condition of this record in necessary in order to understand the purport of the motion in this case, which has been before your Honor in one phase. I presume you have forgotten it, excepting when you hear it you will recall

Certificate of evidence, filed April 30, 1908.

what it is. I mean you will not remember what your decision was until your attention is invited to it.

A bill was filed in the State, Cook County, Circuit Court, in May of this year. The plaintiff in that case is the Chicago Real Estate, Loan & Trust Company. There are a large number of defendants, principally the Corn Products Refining Company, the Corn Products Manufacturing Company, and the Corn Products Company and a lot of co-defendants.

Among the allegations in the bill, and there are many
223 of them, is the charge that "the Standard Oil crowd"—that is the expression that is used in the bill—was destroying the corporate property and assets of the company which the complainant alleged itself to be holding 1,000 shares of stock; the bill alleging that the principal defendants, or one of the principal defendants, the Corn Products Company, is an eighty million dollar New Jersey corporation, that its capital is divided into thirty million of preferred stock and fifty million of common stock, or a total of 800,000 shares, and that the complainant, the Real Estate Company—which I shall use to be brief, because the name is a long one—owns 1,000 of those shares, of the 800,000, and the bill alleges that it was filed—I read from page 11, paragraph 8—that it was filed as follows:

"Your orator"—that is the Real Estate Company—"brings this bill of complaint not only for the benefit of your orators, but also for the benefit of the holders and owners of the stock of said Corn Products Company in the same situation as your orator and said other holders and owners of the said stock are hereby invited to come in as co-complainants with your orator in this bill of complaint, and to share in the benefits of whatever relief may be obtained under it or by virtue of this suit, upon contribution of their pro rata share of the expenses thereof."

224 The bill makes a great many charges of fraud and conspiracy, and alleges that the vast property effects of the Corn Products Company are being dissipated, destroyed, fraudulently converted and secreted "by the Standard Oil crowd" and it prays that the Corn Products Company shall be put in the hands of a receiver, that its property shall be administered by the Court, that it shall be reorganized in the interests of the stockholders complaining and all other stockholders' interests protected and adjusted. It alleges that nearly all of the stock of the Corn Products Company, that is nearly all of its $80,000,000 of capital stock have been ac-

quired by the Corn Products Refining Company, which is another New Jersey corporation; that the Corn Products Refining Company was organized in New Jersey as was the Corn Products Company; that the Corn Products Refining Company through the manipulations, combines and conspiracies of "the Standard Oil crowd", who are the Corn Products Refining Company, has secured control of that company to the extent of nearly all of its capital stock; and that the complaining Real Estate Company, a minority shareholder, is by the manipulations and defalcations and crookedness of the "Standard Oil crowds", and their associates who are made defendants, so operating, running and manipulating and controlling the Corn Products Company, of which the complainant is a shareholder, as to destroy the complain-
225 ant's rights as a shareholder.

The bill alleges that the Corn Products Company and the Corn Products Refining Company and the other companies are New Jersey corporations and that the Chicago Real Estate Company, complainant, is an Illinois Corporation.

It charges all sorts of violations of the anti-trust statute of Illinois and of the United States.

The bill was filed in the State Circuit Cook County Court, and we made an application to remove the case to this court, on the ground, first, that there was a Federal question involved in the bill; second, that there was a diversity of citizenship, the complainant being an Illinois corporation and all of the defendant corporations being New Jersey corporations and citizens of that State; and thirdly, that there was a separable controversy between the Corn Products Company on the one hand, and the complainant, the plaintiff, the Real Estate Company, on the other.

That was submitted on argument on the motion to remove to the State Circuit Court. The judge deemed it proper to reserve his decision, and took it under advisement, and pending that consideration we applied to the Federal Circuit Court for leave to take it to this court and your Honor entered
226 an order permitting the docketing of the case and an injunction enjoining the further prosecution of that case, the Real Estate Company case, until the further order of the court.

Thereupon a motion was made in this court by the counsel for the Real Estate Company, by Mr. Ammen and Mr. Joyner to remand and the case was a year ago before your Honor.

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and now your Honor will probably recall the points of difference of the case at that time.

We contended that there was a Federal question presented on the face of the bill, and your Honor will remember probably that your attention was called to the allegations of the bill. I read one from paragraph 15, page 19 of the printed copy of the bill, where it was charged that the action of the defendants complained of constituted a combination of many millions of dollars of capital and skill, and firms and corporations, and individuals, to limit and control the production of glucose and grape sugar and other commodities and regulate and fix and control and change at the will of said conspirators, the price of the same, and to prevent competitions in the manufacture and sale of such products, all of which is in violation of the statute of Illinois; "An Act to Define Trusts and Conspiracies Against Trade". Then follows a recital of what that act prohibits. And the concluding paragraph of the section is as follows:

227 "and thereby control the price and supply and manufacture thereof, in violation of the common law of the said state, and in violation of the laws of the United States in and for such case made and provided."

Upon that proposition the argument turned. We never got to the question of diversity of citizenship or separability, and your Honor held that a Federal question was presented on the face of the bill because the complainant claimed relief under a Federal statute, and you refused to remand.

Thereupon demurrers were filed by some of the defendants and answers by two of the defendants, and a cross-bill by one of the defendants, and so the record in that case stands to-day; the demurrer raising the question of law, that there is no case made out on the face of the bill; the answer denying the allegations of fact and setting up wherein they were untrue and without foundation of any kind, and another answer pleading estoppel namely, that everything that had been done of which this abused complainant complained had been voted on expressly and affirmatively at every annual stockholders' meeting the date being given and concurred in and approved by this complainant.

With a record in that case showing, first, a denial of all the facts; secondly, a denial of there being equity on the

228 face of the bill; and thirdly, pleading an estoppel, showing that every one of these various acts which are complained of in this bill had been affirmatively and expressly

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voted for by the complainant; with the record in that condition, they made a motion to get out of this court, to dismiss that case. The motion they served upon us was never brought up or disposed of; it was a motion in which the complainant gave notice to my firm that they would move to dismiss the bill of complaint in the above entitled case without prejudice, and without prejudice to the right of the cross-complainant in said cause to prosecute his cross-bill of complaint. This was served on October 2. That is, a complainant which had been enjoined from prosecuting its case in the State Court, and whose motion to remand had been overruled, in a case in which there was a plea of estoppel, and a cross bill asking affirmative relief, gave notice that it would dismiss its bill of complaint.

Mr. Ammen: I want to correct that statement. The answer setting up estoppel was filed long after that.

Mr. Mayer: I will discuss that. I cannot answer, because I do not know just when the cross-bill was filed, The same day that your Honor denied the motion to remand—I say the same day, the same or the next day after the motion to remand which was overruled on June 8, 1907, a cross-bill seeking affirmative relief was filed on either June 8 or June 9th, I will give your Honor the exact date, and after it
229 has been on file four months, we are met with a notice to dismiss. The notice was not called up.

We then met the following situation; with an injunction pending restraining further proceedings in a State Court. with your Honor refusing to remand, with a cross-bill and answer and demurrers, and a motion to dismiss served but not called up, the next thing that happens is the filing of another bill in a State Court; and that was filed on October 19, or 17 days after the motion was served to dismiss the bill of complaint. And I have here, and it is made an exhibit to our motion, the duplicate original copy of the second bill which was filed in the State Court, which was first entitled "Circuit Court of Cook County, Chicago Real Estate, Loan & Trust Company Complainant versus The Standard Oil Company of New Jersey and others." That has been changed so as to make it read "Superior Court of Cook County," and "George F. Harding, complainant," instead of the Chicago Real Estate Loan & Trust Company; and there has been eliminated from the bill the words; "and of the United States."

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twelve or fourteen thousand dollars. George F. Harding took some four appeals to the Appellate and Supreme Court. In all of these cases, the counsel who appear for him here appeared for him there. And all of a sudden, Harding, who was born in Illinois, some seventy years ago, changed his residence to California and became a citizen of the Golden State, and he was not a citizen of Illinois, and therefore he filed a bill there for divorce against his wife who had pending here her separate maintenance proceedings, and he secured his divorce against his seventy-year old wife on the ground of alleged desertion; and then he came back from California and interposed the decree of divorce as a plea in bar to the further maintenance of the separate alimony suit.

Mr. Ammen: Does that appear in this record?

Mr. Mayer: Yes.

234 Mr. Ammen: Where?

Mr. Mayer: In the cases which I referred to in the petition.

The Court: Now regardless of all this, let me ask, is Mr. Joyner here?

Mr. Joyner: Yes, sir.

Mr. Ammen: I appear for Mr. Harding and Mr. Joyner, the latter not having been admitted to this Court. I do not understand the object of all this talk outside of the record, and I think it is a very simple proposition.

The Court: I want to make it a simple proposition. Is the George F. Harding for whom you filed this bill in the State Court connected in any way with the Chicago Real Estate, Loan and Trust Company?

Mr. Joyner: Not to my knowledge, he is not an officer and has not been for many years.

The Court: Was he connected with it in any way when the original bill was filed?

Mr. Joyner: Now, your honor, not to my knowledge.

The Court: You filed the original bill for the Chicago Real Real Estate Loan & Trust Company?

Mr. Joyner: I did.

The Court: How did he happen to become interested in a legal proposition that that company raised in its bill?

Mr. Joyner: He owns stock.

The Court: Did he know of that litigation?

Mr. Mayer: He appeared to and his son did.

The Court: Did he know anything about the litigation, the questions legal and of fact which were tendered as the

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result of the bill filed by the Chicago Real Estate Loan & Trust Company, a year ago, brought here?

Mr. Joyner: As to the proceedings in that?

The Court: Yes?

Mr. Joyner: I think he was advised.

The Court: Have you any doubt about that?

Mr. Joyner: No.

The Court: You can answer me with perfect frankness, or you can claim your rights under tthe Constitution.

235 Mr. Joyner: I am not asking any rights to protection under the Constitution. I want to say that after Mr. Harding returned to this country—he was absent at the time of filing the first bill—I think everything was disclosed to him as to the action taken in this court.

The Court: Who would know whether he had been?

Mr. Joyner: Mr. Harding would.

The Court: You are his counsel?

Mr. Joyner: Yes, in the State Court. I disclosed everything.

The Court: You are filing this bill for him in the State Court?

Mr. Joyner: In the State Court, yes.

The Court: You filed the original bill of the Chicago Real Estate Loan & Trust Company?

Mr. Joyner: I did.

The Court: You knew about what had happened there and here? You would not have filed this bill without telling your client?

Mr. Joyner: I don't think there was anything transpired that he was not informed about.

The Court: Now is his son president of this Trust Company?

Mr. Joyner: I believe he is.

The Court: Is there any doubt about it?

Mr. Joyner: No. I was not present when the election was being held, but I think he was.

The Court: Is he?

Mr. Ammen: That is my understanding, that George F. Harding, Jr., is and has been.

The Court: Do you know he was elected?

Mr. Joyner: I have no personal knowledge?

The Court: You have no personal knowledge?

Mr. Joyner: I understand he is President. He is owner of nearly all the stock.

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The Court: Was there ever an application made to dissolve that order, to vacate that injunctive order in the former suit?

236 Mr. Mayer: Right in this court. The record will show there was a motion made to remand, and set aside the docketing order which gave the injunction, and that was overruled.

Mr. Ammen: Motion was made to remand.

The Court: That order stands, does it?

Mr. Mayer: Yes, sir.

The Court: This is a most extraordinary situation to me. I may get a wrong view of it, but I will hear anything you have to say.

Mr. Ammen: Our contention is that these plaintiffs are as different as if their names were Jones and Smith.

The Court: I will hear you on that contention.

Mr. Ammen: I cannot understand why Mr. Mayer should go out of the record to make so many statements here, unless it was to arouse some prejudice here. He has gone out of the record here upon matters that do not appear in this court.

The Court: You need not bother about any such questions, I will control that. Mr. Ammen, I am not at all afraid of that. When I come in here, I leave all that on the other side of the door.

Mr. Ammen: The complainant in the first suit is the corporation, the Chicago Real Estate Loan & Trust Company. The complainant in the second suit in the State Court is George F. Harding. Since this order was obtained from Judge Kohlsaat, ruling us to answer by ten o'clock this morning showing why an injunction should not issue, these same gentlemen have proceeded to remove the other case to this Court, so they are both now in this court. Mr. Joyner is present and he has acted openly, frankly and squarely, and if there has been any mistake here, it has been an honest mistake. Our view has been and our contention is that the second suit in the State Court is by a separate and independent plaintiff, honestly and squarely brought, who elected to bring that case in that court for what he supposed good and sufficient reasons, rather than to accept the invitation to come into the Chicago Real Estate Loan & Trust Company suit before this court, not with a view of getting rid of the Federal Court or of getting out of the Federal Court.

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The cross-bill of Joy Morton in the Chicago Real Estate
237 Loan & Trust Company suit, the first one removed to this court, sets up, among other things, and the answer also does, that the Chicago Real Estate Loan & Trust Company as an Illinois corporation, has no right to hold this stock in the Corn Products Company. And the cross-bill, setting up the same facts, prays that this stock may be cancelled. That is the affirmative relief that Mr. Joy Morton claims in this court, that the Chicago Real Estate Loan & Trust Company may be decreed to be incapable of holding that stock, and that its stock may be cancelled.

Now Mr. Harding did not want to get involved in that controversy.

Then the last answer filed also sets up laches, and I understand sets up this question of estoppel.

These are things that we understand are not open to be urged against Mr. Harding, personally, and I understand he did not want to go into those controversies here. My understanding and contention will be, and Mr. Harding's will be, that a party is not bound to accept the invitation to join with the complainant in any other suit, that he may bring his own suit.

Questions may be raised later as to the court's consolidating the cases, or hearing them together, but my understanding is this, that a complainant seeking rights as a stockholder is not bound to accept the invitation and join in the prosecution of another suit.

Now, while the first bill refers to Standard Oil methods, and Standard Oil financing and all these things, it does not make the Standard Oil Company a defendant to the suit. We understand from facts that have developed since the first bill was filed, that the Standard Oil Company has been engaged in an effort to freeze out stockholders which seems to have been successful as far as we have been able to find, except as to Mr. Harding and the Chicago Real Estate Loan & Trust Company, and perhaps a few others. We understand from the present situation, from our present information, that not only have Standard Oil Company's methods been resorted to but that the Standard Oil Company of New Jersey is at the bottom of and behind the entire scheme. We have in the State Court, therefore, made the Standard Oil Com-
238 pany a defendant, but that Company was not a defendant in the first suit.

Now I positively know—I have represented Mr. Harding in

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all these litigations and I have represented the Chicago Real Estate Loan & Trust Company and Mr. Harding both for nearly twenty years, and my clear understanding is—and I think I know the exact facts—the Chicago Real Estate Loan & Trust Company for at least ten years, or as much as six years ago at least, that he has never had anything to do with it since, that his only connection with it is in an advisory capacity, and that Mr. Harding is now 78 or 79 years of age—

The Court: Where is he?

Mr. Ammen: At his son's house, 2536 Indiana Avenue. When the first bill was filed, I understood he was then on a sick bed in Paris, suffering from an operation there and it was very doubtful if he would recover, but he is here now and can come into Court. There is nothing we wish to conceal. There has been no intention to do anything whatsoever in violation of the first order of injunction, and this is the first suggestion we have had that the filing of this 2nd bill is claimed to be in conflict with the first order.

The Court: I do not know that anybody claims it, but the atmosphere is surcharged with so much that suggests a violation, that I wish to follow it up.

Mr. Ammen: Of the first order?

The Court: Yes.

Mr. Ammen: Suppose the plaintiff is different—

The Court: What is the use of taking up time with such affectation as that! Here is the same lawyer that brings the same suit.

Mr. Ammen: But different complainants.

The Court: It is the second bill for the same complainant.

Mr. Ammen: No, your Honor. My understanding of this was that Mr. Harding at first expected that he would go into the Federal Court and that this bill was prepared to be presented as an amended supplemental bill in the Federal Court. That is my understanding. I do not know how it came to be printed, but he decided later on to file it as a bill by George F. Harding.

The Court: Who decided that?

239 Mr. Ammen: Mr. Harding himself, as I understand it.

The Court: What interest did he have in supplemental proceedings in either suit?

Mr. Ammen: He was associated with his son in a friendly way in an advisory capacity: he is a lawyer. We plant our standing on his plain proposition, that this has nothing to do

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with the Chicago Real Estate Loan & Trust Company, that he has no interest in this stock, that he is not an officer or a director, and is entirely independent of that suit. If we are wrong in that, that is entirely a different situation. This is different stock, we are not filing this bill on the same stock.

The Court: I did not assume that you were.

Mr. Ammen: Oh, certainly not. I know this, I have had conferences with Mr. Joyner and Mr. Harding; we have discussed these questions openly, without reservation, with each other; and I never understood from Mr. Harding that there was any disposition or desire to avoid in any way the first suit, not at all, it was just a question as to whether he was bound to raise this question, as to whether he was bound to go into that suit on the invitation of the complainant, or whether he had a right to proceed independently; and I said to him as a lawyer that I understood—without stopping to look it up in this connection—that I understood that a party invited to enter a litigation did not have to, that I thought it was a question of law, if they brought an independent suit, it was a question for the court to determine what should be done about hearing them together.

Now if your Honor wants to hear the facts about Mr. Harding being entirely independent as an individual, we set it up in our answers to the rule that he does not own a dollar of the stock of the Chicago Real Estate Loan & Trust Company, is not an officer or director, and had nothing to do with the former proceedings. His sons are directly interested in it, but outside of the friendly relations or understanding with members of his family, for many years he has had no connection, no business connection whatsoever with that company. And we have assumed that, that being true, he was no more bound to come into the first suit and no more bound 239½ by the injunction in the first suit than Marshall Field would have been, if living; that he is a stranger to the suit, a stranger to the litigation, and this suit, this new injunction now is made aaginst Mr. Harding, not against the Chicago Real Estate Loan & Trust Company, and against Mr. Joyner as attorney for Mr. Harding. Mr. Joyner is not the attorney in this court for either of the parties—

The Court: Isn't he in the State Court?

Mr. Ammen: Certainly, in the present State Court suit, and we plant ourselves on the proposition—

The Court: I may be wrong on the facts.

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Mr. Ammen: —that the plaintiffs are different, that is all.

The Court: What is Mr. Joyner in the second suit seeking?

Mr. Ammen: Mr. Joyner represents a new plaintiff in the new suit in the state court, but assuming even that he may have availed himself on the same kind of relief and the same facts, we say the question rests on the proposition that he has an independent claim, and he had a right to come over here and have his typewriter copy the entire bill and adopt it for his suit.

The Court: Who did?

Mr. Ammen: Mr. Joyner for Mr. Harding.

The Court: Well, you may be right, but I don't think you are.

Mr. Ammen: Leave Mr. Joyner out of this for a moment—

The Court: When that first bill was filed and got here, the order of injunction was against the counsel for that complainant.

Mr. Ammen: It was only against its counsel.

The Court: I am not very busy, but I am too busy to sit here and split hairs on propositions where a lawyer is involved. A lawyer ought not to want to try his case that way. Where a lawyer is enjoined in a case of that kind, why of course he doesn't go and get another client by himself through whom he may litigate the same situation.

Mr. Ammen: Nothing of that sort was ever dreamed of.

The Court: Now, when a second client turns up alleging the same relations, the situation exists which on your own statement where anybody who happened to call would
240 receive the same kind of advice as to action in these two suits.

Mr. Ammen: It is not the same stock. Suppose Mr. Harding individually does own separate stock in the Corn Products Company, as Mr. Joyner in his answer to the rule says, and that he has nothing to do with these matters, except as attorney, and of course will abide by any order that may be entered against his client, has no relations except as attorney; it was furthest removed from his mind that there should be any attempt to avoid the order of this Court and I may disabuse your Honor's mind on that.

We planted the case squarely on the proposition that the stock is different and the plaintiff is different and if your

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Honor wants the fullest hearing on that, we shall be glad, as we have not a thing to conceal.

The Court: Do you claim there was ever any possibility of Joyner in the original suit, under the injunction, ought not to go any further, that it never occurred to anybody?

Mr. Ammen: This was a new plaintiff, and it never occurred to us for a moment in any of our discussions together. Why, Mr. Joyner would have stopped instantly. Your Honor may give us credit for sufficient intelligence to know that as lawyers, but it never occurred to us; if it had occurred to us we would not do that; that is, we never intended to be in conflict with this court, the idea of a conflict by reason of the other order never occurred to anybody. I know it could not have occurred to Mr. Harding, because he is a very open, frank, square man, and in all our discussions it never was hinted.

The Court: Who is president of the Chicago Real Estate Loan & Trust Company?

Mr. Joyner: Mr. Harding, Jr., I understand.

Mr. Ammen: That has been our information for some time.

The Court: Unquestionably. I want to know, because I am getting ready to enter an order on the facts. Send for Mr. Harding, Jr., to come over here.

Mr. Joyner: I don't know whether I can reach him.

The Court: Get Harding, Senior, or Harding, Junior.

Mr. Ammen: Both of us have understood for years 241 that George F. Harding, Jr., was President.

The Court: If you know where he is, telephone him to come over here, go to the telephone, and telephone for him yourself.

Mr. Joyner: 3394 Main is Mr. Harding, Junior's, office phone.

The Court: Go to my chambers and telephone him.

Mr. Ammen: May it be understood that all the record and files in both of these cases are before the court? They are both in this court.

The Court: I understand the first case is in this court, and the motion to remand overruled, and injunction against the complainant from proceeding in the state court. The second is here on order docketing that case on petition of defendants.

Mr. Ammen: I would like to have it understood that the

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entire record in both cases is before this court, on this hearing.

Mr. Mayer: Most assuredly. We make them a part of our record in our petition. Said files and record in said second suit are hereinafter shown as a part of this certificate of evidence.

Mr. Ammen: Does your Honor understand that George F. Harding was not the plaintiff in the first suit, and he is the plaintiff in the second suit?

(No answer.) Here follows some argument by Mr. Mayer * * * * *

Mr. Ammen: Our idea was that they cannot in this suit raise that question, the question about the incapacity of the complainant, to hold stock in the Corn Products Company but fearing that they could, and fearing we might have to stand or fall with the complainant in that case, on that question, we thought we had a right to file this second bill, independently, by the same attorney or by anybody else. Now if we are wrong in that, we have made a mistake, that is all; but, so far as any idea or intention of evading any order of this court, or of any contempt, it was the furthest from our minds. We were not trying to turn corners nor to do any sharp practices; nothing of the kind. We squarely planted ourselves on the proposition that Mr. Harding was entirely independent. Now if it should develop, your Honor, upon a hearing of proof, if any proof should be heard, that they are not independent, that would be a different question. I know Mr. Joyner and I relied on that being the fact.

242 The Court: You mean to say you understood but that you never talked it over when this matter was discussed?

Mr. Ammen: Yes, Mr. Harding in his sworn answer to the rule states that he has nothing to do with the other stock, and that this is his own stock, and he is not the president of the Company. (Handing said answer to the court.)

I admit that the Chicago Real Estate Loan & Trust Company, that it is charged it has been used to conceal facts and to cover up property, but we are able to disprove it by Mr. John S. Miller, and Mr. Harding, and everybody else connected with it. This intimation that there was a trick in moving to California is also without foundation.

Mr. Mayer: What does the Supreme Court say in the 198 U. S.? If you are interested, just look over the 198 U. S.

Mr. Ammen: Mrs. Harding appeared there, the court heard

her, and the California courts differed with the Supreme Court of the United States. Certificate of evidence, filed April 30, 1908.

Mr. Mayer: Yes, quite materially.

The Court: Has he an office?

Mr. Ammen: Oh, yes, your Honor, his office phone is Main 3394, at 157 Washington Street. He (George F. Harding, Jr.,) usually don't get down till 11 o'clock.

Mr. Mayer: I am advised, your Honor, by Mr. Bangs of my office, that the name of George F. Harding, Jr., and the Chicago Real Estate Loan & Trust Company are on the panel of the same door, in the same office, have the same office.

Mr. Ammen: For the purposes of this case it may be stated that the president of the Company, and the controller of the company is George F. Harding, Junior.

The Court: You have him here at 2 o'clock; I will take this matter up at 2 o'clock—just wait a minute.

(George F. Harding and George F. Harding, Junior, here came into Court.)

Mr. Ammen: If the court please, Mr. Harding, Senior, and Mr. Harding, Junior, are both here.

243 GEORGE F. HARDING, JR., was here questioned by the Court, and answered as follows: Testimony of George F. Harding, Jr.

Q. Mr. Harding, will you kindly tell the Court if you have any connection with the Chicago Real Estate Loan & Trust Company?

A. Yes, sir, I am president of it.

Q. How long have you been president of it?

A. In the neighborhood of ten years.

Q. Who did you succeed?

A. I succeeded, I think, a man named Callow, and before him was also my father. There have been several presidents of it.

Q. Were you the president of the Chicago Real Estate Loan & Trust Company at the time that a suit was started in the State Court months and months ago, maybe a year?

Mr. Mayer: May, 1907.

Q. (Continuing) May of this year, when a suit was started against certain Corn Products Companies, the complainant being the Chicago Real Estate Loan & Trust Company, in which suit certain defendants filed a petition to remove that case here and the case came here?

Testimony of George F. Harding, Jr.

A. I was.

Q. Did you know about the filing of that proceeding in the state court?

A. I did.

Q. And about its being brought here?

A. I think I was so informed, your Honor.

Q. Have you any doubt about your having knowledge that that suit was gotten into the Feedral Court? Who was your counsel?

A. Mr. A. B. Joyner, the counsel for the company.

Q. You are not sure whether you ever heard from him that that suit was removed from the State Court to this court?

A. Yes, I have a distinct recollection of it.

Q. Now, what is the Chicago Real Estate Loan & Trust Company, what is its business?

A. We have—we buy and sell real estate, deal in real estate all the time.

Q. What is its capital stock?

A. $250,000.

244 Q. Are you a holder of some of the stock?

A. I am a large holder of it, a very large holder.

Q. Is your father a holder of stock?

A. Not a dollar.

Q. Has he ever been?

A. Yes, many years ago, fifteen years ago or more than that; I cannot tell the exact date, I think I bought his stock in 1893.

Q. Did you ever hear that there had been started or was to be started a suit in the State court by your father, George F. Harding, against the Standard Oil Company of New Jersey, which suit bears General Number 263,565 in the Superior Court of Cook County?

A. I heard of it in a general way.

Q. When did you hear of it, and from whom?

A. I just heard—I heard my father speak of it and I heard Mr. Ammen speak of it and Mr. Joyner speak of it. I paid no attention to it.

Q. Did Mr. Joyner ever talk to you about it?

A. Not that I remember of, no.

Q. Do you know how he happened to become counsel for your father in this State Court suit?

A. Why, Mr. Joyner has always been connected with my father, and also with me, for many years.

Testimony of George F. Harding, Jr.

Q. Do you know how the suit happened to be started, the suit of George F. Harding against the Standard Oil Company of New Jersey, this last suit started in the State Court?

A. No, I don't know how it happened to be started.

Q. Well, did the Chicago Real Estate Loan & Trust Company contemplate starting a suit in the Superior Court of Cook County against the Standard Oil Company of New Jersey to litigate certain questions of certain glucose Corn Products Companies in which litigation it was expected to go into certain charges against the Standard Oil Company of New Jersey?

A. The Chicago Real Estate Loan & Trust Company only started one suit.

Q. You never contemplated any other suit?

A. I never contemplated any other suit in any way, shape, style or manner in the smallest degree.

245 Q. You never gave Joyner instructions to draw a bill in behalf of the Chicago Real Estate Loan & Trust Company to be filed in a State Court against the Standard Oil Company of New Jersey?

A. Never.

Testimony of A. B. Joyner

A. B. JOYNER, was here further questioned by the Court and answered as follows:

Q. Mr. Joyner, how did you happen to draw this second bill?

A. Beg pardon?

Q. How did you happen to draw this second bill?

A. Why I only assisted in the drawing of that bill.

Q. This bill, this bill, how did you happen to draw this second bill?

A. It was prepared, if the court please, it was prepared in discussing the matter with Mr. Ammen, upon or about the time the motion was made to dismiss the other proceeding in this court, and if this proceeding in this court was dismissed, we might begin another proceeding in another court but not while this proceeding was pending.

Q. Who did you discuss it with?

A. Mr. Ammen, and I discussed it—Mr. Ammen.

Q. Did you ever discuss it with your client?

A. With Mr. Harding, Junior?

Testimony of A. B. Joyner.

Q. No, your client, the Chicago Real Estate Loan & Trust Company?

A. Why, I don't recall it, I discussed it with Mr. Harding.

Q. Were you going to start it without their knowledge?

A. No, sir; no, sir.

Q. Did you have it printed with his knowledge?

A. I don't recall consulting Mr. Harding, Junior, about the matter.

Q. Did you consult anybody else representing the Chicago Real Estate Loan & Trust Company on that, about it?

A. I consulted Mr. Ammen.

Q. Is he an officer of the company?

A. He is not.

Q. A stockholder?

A. He is not.

Q. Is he a director?

A. No, sir.

246 Q. Who, for the Chicago Real Estate Loan & Trust Company, had any connection with the drawing of this second bill?

A. I don't know that I ever discussed it with anybody except Mr. Harding, Senior.

Q. When you drew this bill in which the Chicago Real Estate Loan & Trust Company is plaintiff, did you consult with George F. Harding, Senior, about the litigation?

A. I cannot say that.

Q. You would not have drawn this Harding bill without anybody having known about it?

A. That Harding bill was drawn by Mr. Harding, Senior, and I only assisted in the work.

Q. How came you to use the Chicago Real Estate Loan & Trust Company as the plaintiff in this Harding suit?

A. Why, Mr. Harding, he drew the bill.

Q. How did you happen to use the name, Chicago Real Estate Loan & Trust Company, a corporation, as the complainant in a bill which Mr. Harding, Senior, drew?

A. Oh, it was discussed by Mr. Harding, Mr. Ammen, and I, that we would dismiss the proceedings in this court and begin a new proceeding.

Q. What right had Mr. Harding Senior to file a new bill in behalf of the Chicago Real Estate Loan & Trust Company?

A. Why he was simply advisor to Mr. Harding, Junior, the president of the company.

Q. Then you did advise with Mr. George F. Harding, Junior, about starting a new suit?

A. No, simply with Mr. Harding, Senior. Mr. Harding, Senior, is the only one I advised with. I simply assisted Mr. Harding, Senior.

Q. You assisted Mr. George F. Harding, Senior, in preparing the second bill to be filed in the chancery court of the state?

A. In the chancery court of the state, and it was only to be filed in the event that the proceedings in this court were dismissed.

Q. And you proposed in that suit to litigate in the name of the Chicago Real Estate Loan & Trust Company, as complainant?

A. It was thought of at the time, after we should dismiss the first suit.

247 Q. You proposed to do that?

A. Not while this suit was pending.

Q. No, but subsequently?

A. It was discussed with him I believe—

Q. Oh, just answer without the "believe"; you are a lawyer.

A. I was, but only connected as assistant in the matter, assisting Mr. Harding, Senior, practically in a clerical capacity in that case.

Q. Did you draw the bill, a copy of which is now here before me, bearing term number 9213, which appears to have been filed in the Superior Court of Cook County on the 19th day of October, 1907, at 11:45 A. M., and entitled "George F. Harding vs. Standard Oil Company of New Jersey, and others, defendants", on the cover of which is scratched out "Chicago Real Estate Loan & Trust Company, a corporation" which appears to have been printed originally as the complainant, did you have anything to do with the drawing of that bill?

A. In a clerical capacity, yes, I assisted Mr. Harding, Mr. Harding, Senior.

Q. How old are you?

A. Thirty-five.

Q. Did you file the original bill in the first suit, which was removed to this court?

A. Yes, sir.

Q. And which was entitled "Chicago Real Estate Loan & Trust Company" against certain defendants, being the first

Testimony of A. B. Joyner.

one of the two suits that we are talking about, did you file that as counsel?

A. Yes, Mr. Harding was not here at the time.

Q. You filed it as counsel?

A. Yes, as solicitor.

Q. Who was the complainant?

A. The Chicago Real Estate Loan & Trust Company.

Q. Who drew that bill?

A. Mr. Ammen, and myself.

Q. Did you have that bill before you when you drew this second bill?

A. Mr. Harding drew it, the second bill, if your Honor please; I only acted in a clerical capacity.

Q. Did you do anything except loan your name as complainant's solicitor?

A. I think I did, yes.

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248 The Court: Mr. Ammen, this is positively pathetic. What do you say to the question? What do you, a member of the bar, in this court, what do you say upon the question of institution of this second suit under these conditions, and after this injunctive order?

Mr. Ammen: Do you want to hear from me?

The Court: I say, what do you say?

Mr. Ammen: As I understand it, your Honor, I want to answer the best I can. This second bill—your Honor does not understand that Chicago Real Estate Loan & Trust Company, Mr. George F. Harding, Senior, Mr. George F. Harding, Junior, and myself and Mr. Joyner have been associated intimately for twenty years, and have been working together, we confer together very freely and we did in this entire matter. This bill which appears to be so suspicious in the changes on its face is capable of a perfectly fair and honest explanation. It was contemplated by myself—Mr. Joyner and I have always worked together—it was contemplated that this first suit its defendants having raised this question about capital stock, about the Chicago Real Estate Loan & Trust Company holding this stock and bringing this suit, it was contemplated in view of these questions being raised, that if this court would permit us to dismiss that bill, in view of that expectation—

The Court: What do you mean by "us"?

Mr. Ammen: All of us. If you want me to—

Certificate of evidence, filed April 30, 1908.

The Court: I do not want anything but the facts, that is all I want to know now.

Mr. Ammen: I mean, Mr. Harding, Senior, Mr. Harding, Junior, Mr. Joyner, and myself.

The Court: You four gentlemen discussed that question, did you?

Mr. Ammen: We discussed it, Mr. Harding, Junior, was not present at any of those conferences that I know of, but between us, Mr. Harding, Mr. Joyner representing Mr. Harding, I being associated with them, I representing the Chicago Real Estate Loan & Trust Company, it was contemplated that the Chicago Real Estate Loan & Trust Company's suit would be dismissed; so this bill in the—I did not have anything to do with the printing of this second bill.

249 The Court: You say it was contemplated. You mean there were conferences at which it was agreed it should be dismissed?

Mr. Ammen: We expected it would be dismissed.

The Court: By whom?

Mr. Ammen: By the Court.

The Court: You were going to ask the dismissal of this first suit?

Mr. Ammen: Yes, Mr. Harding, Senior, myself and Mr. Joyner contemplated that.

The Court: Was Harding, Senior, a party to that litigation?

Mr. Ammen: No.

The Court: How did he expect to get it dismissed?

Mr. Ammen: He was an attorney at this bar.

The Court: Was he attorney in this litigation?

Mr. Ammen: No, he is a friend—

The Court: When did Mr. George F. Harding, Senior, have anything to do with the original litigation, either directly or indirectly or indirectly?

Mr. Ammen: I understand through correspondence between himself and his son, Mr. Harding giving his son such suggestions as he could regarding the first bill filed, but Mr. Harding was not in this country at that time nor for sometime afterwards. They contemplated that this suit would be dismissed, as I understood them. Now I did not have anything to do with the printing of this second bill. Mr. Harding is an old lawyer, and knowing these facts, drew this second bill; and I was informed by Mr. Harding and Mr. Joyner both, that it was the expectation that that bill would be filed

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in the name of the Chicago Real Estate Loan & Trust Company in the Circuit Court of Cook County after a dismissal of this first suit here. It was contemplated that this first suit would be dismissed by an order of this court. For some reasons which I do not understand myself, and never did, it was decided by them that there would be no further attempt to dismiss this bill here, so that that printed bill was changed and adopted with considerable changes and reprinting of first pages and reprinting of last pages and some 250 changes through the center, and there was a bill then filed by George F. Harding, in the State Court. The fact that this erasure occurs, that is the complete explanation as far as I understood, it was intended originally to file it in the name of the Chicago Real Estate Loan & Trust Company after a dismissal of the first suit, but in view of this question being raised as to its right to bring such a suit, Mr. Harding says, he says, Mr. Harding as I understand then intended to go into the Chicago Real Estate Loan & Trust Company suit, but he decided to file an independent bill, and that is the reason for the change.

The Court: Who is the complainant in this last?

Mr. Ammen: George F. Harding, alone.

The Court: Who was in the other?

Mr. Ammen: The Chicago Real Estate Loan & Trust Company, alone.

The Court: Is the Chicago Real Estate Loan & Trust Company in control of the plaintiff of this last suit?

Mr. Ammen: Mr. Harding is acting in an advisory capacity.

The Court: How did the complainant in this second suit expect to use the name of the Chicago Real Estate Loan & Trust Company in this second suit, in case the former should be dismissed?

Mr. Ammen: Mr. Harding acted in an advisory capacity, but is not interested in the Chicago Real Estate Loan & Trust Company. The father and son are as intimate as it is possible for people to be.

The Court: I should say so.

Mr. Ammen: And the father in his advisory capacity talked freely; there was no concealment by either from the other. If there are any other facts, Mr. George F. Harding, Senior, is here and will testify or make any statement as to facts. If there has been any conflict or any violation of any order of the court, I want to repeat we never heard it inti-

mated that we were to come in here before your Honor on such a question; this petition did not hint at anything of the sort, this motion was that the plaintiff, or Mr. Harding, or the Chicago Real Estate Loan & Trust Company, were to answer this rule and that is the proposition we were prepared to meet and disprove; and so far as these gentlemen are concerned, they are associated through counsel but in a friendly way, and not a collusive way. Certificate of evidence, filed April 30, 1908.

The Court: (Addressing George F. Harding Sr.) Have you anything you want to say, Mr. Harding?

GEORGE F. HARDING, Senior, in reply to the Court thereupon stated, as follows: Statement of George F. Harding, Sr.

I have. I would like to be examined in any way you please. I spent two months preparing that bill for myself, and my stock has nothing to do with the other concern. I was abroad when the former bill was filed. I declined to go into it. I knew no reason why I should. I had nothing to do in the case which was first brought, I was abroad in France, I was sick, absent, and was not in America, when that bill was filed. I do not understand what I have to do with it and I have committed no offense. I was not in with anybody, no other person, I am alone in that; in the second suit, it was my stock and my bill. How it was drawn originally, it was drawn for me, and I do not understand what possible conflict there can be any more than there can be a conflict between two men entirely removed. I have not been connected with the Chicago Real Estate Loan & Trust Company for many years. The gentleman asserts I have. It isn't true. I have not any stock. My son is president of the company, and the stock is held by other people. I cannot understand what I have to do with it. We all have claims against the Standard Oil Company and I was invited to go in with the stockholders who were consolidated together, I had a claim but I would not go in with them, no, I would stand on my own feet. I preferred to go to some other court and have my rights adjudicated.

The Court: This question has not been raised by your adversary; it has been raised by the court.

Mr. Harding: It is perfectly new to me; I don't know what I have to do with it, unless I am not a free man to file a

Statement of George F. Harding, Sr.

bill or not as I choose. We are dead in earnest and all independent stock, and we are only a part of the people that have got stock. Others have got stock also, and there is no question about my right, as I see it, to file an independent bill.

252 Now, about the bill, it was printed originally with a totally different view and printed with something else in view. When we got this notice we thought he intended to dismiss his bill, to dismiss this Chicago Real Estate bill and later on this bill was changed and revised. Now we have been acting in this matter in perfect good faith and without any idea of coming in conflict with this court.

253 The Court: What is the application here?

Mr. Mayer: The application, your Honor, is for a rule to be made absolute and complete, to make the injunction permanent, to compel the dismissal of the suit in the state court and for such further action as the court things best to avoid any sneaking attempts to avoid your Honor's first order.

I want to say a word or two, and without any heat or passion. There has been an exhibition before your Honor during the last thirty minutes that I hope is new to this court. It is far from me to condemn the character of a man on whose head there is gray hair and who has been so long a member of this bar. All of these four parties, your Honor, are lawyers. The oldest of the four passes under that title and is a member of the bar of this state and has been for a good many years. Mr. Ammen is a lawyer, Mr. Joyner is a lawyer and I thought the son was a lawyer. I may be in error as to that. I do not mean by saying that they are lawyers that Mr. Harding is a lawyer in the sense in which your Honor would use the term, but he is admitted to the bar.

Now it is clear an effort was made to dismiss this first suit, in which they either failed or changed their minds, and it appears that Mr. Harding himself drew that second bill and that he waited two months to do it.

Mr. Harding: I did.

254 Mr. Mayer: And drew it in the name of the Chicago Real Estate Loan & Trust Company.

Mr. Harding: I said exactly the contrary.

Mr. Mayer: It is entitled the Chicago Real Estate Loan & Trust Company—

Mr. Harding: That is untrue.

Mr. Mayer: And the bill was deliberately intended to carry out practices for which he stands condemned by the official

report of the United States Supreme Court and when I say that, I base it on the decision of the Supreme Court.

Mr. Harding: I never heard that before in my life and I don't believe it.

Mr. Mayer: The purpose has been to use that as a cloak to cover the purpose for which this bill was started by Mr. Ammen and Mr. Joyner and by the eldest of the four and is a confession that they expected to get out of this court. They deliberately scratched out of the second bill the allegation of the Federal law, and they deliberately offend and insult the jurisprudence of the United States and its courts by deliberately saying we do not want any help from them, fie upon your jurisdiction and your law, deliberately saying we do not want any assistance. If that is not an effort to get away from your Honor's injunction, there has never been one made.

I think the example should be made of these men and particularly of the eldest Harding.

255 Mr. Harding: If anybody has offended, I am the man.

Mr. Mayer: And that your Honor shall enter an order just as Judge Kohlsaat did in another case where a similar attempt was made, only it was made as appears honestly, by Mr. Eddy—not A. D. but A. J.—through inadvertence. A bill was filed when they were arguing a case before Judge Kohlsaat, and it was thought that Judge Kohlsaat was going to sustain their position, and Mr. Eddy had prepared a bill, and his office had filed it, thinking he was going to get a favorable decision by the Federal Court to which we had remanded the case, and that he would obtain prior jurisdiction by filing his bill first in the State court, and against the bill we filed before Judge Jenkins and Judge Kohlsaat entered this order; and he purged himself of contempt by showing, and we conceded that Mr. Eddy, that that bill was filed in the State Court that his office filed it in excess of diligence, thinking this bill we were arguing would be dismissed, and notwithstanding, Judge Kohlsaat entered an order—

Mr. Ammen: The plaintiff was the same

Mr. Mayer: No, sir, different plaintiffs, different parties, but the same relief and that was on a cross bill that we filed. Now in another case—

Mr. Harding: Has this petition and answer been read?

Mr. Mayer: The court has read the answer.

256 and the contents of the petition has been stated to your honor.

Statement of George F. Harding, Sr.

Mr. Ammen: I would like your Honor to look at the petition.

Mr. Mayer: If it pleases your Honor, if there were no hint at all, the court can sua sponte, make an example of this disgusting, unprofessional and disreputable method of endeavoring to avoid the order of the court, and every explanation that is advanced emphasizes the offense.

Now I am perfectly willing to take the statement of Mr. Ammen and take the statement of Mr. Joyner precisely for what they give it. What do they show in their statements? They filed first a bill in the name of the Real Estate Company with the name of the president of the Company George F. Harding, Junior, the son of the eldest of the four parties; that after they had made an effort to get the case out of this court, they proceed to file a second bill and it has been stated that the first bill was filed after correspondence with the old man. He says he was abroad. Mr. Joyner or Mr. Ammen stated that they had correspondence with him, so as to get his full advice as to the kind of bill to draw. They sent the first bill that Mr. Harding had drawn against these parties, say they conferred with him while he was abroad. He therefore
257 knew this first bill was being drawn and filed, and when he himself comes back he devotes two months to drawing a similar bill, and Mr. Ammen states they had the first bill before them, that they eliminated some here, added some there, took out a page or two from the middle and substituted a page or two therefor, and used the bill as the frame work of the second, and that was drawn in the name of the Chicago Real Estate Loan & Trust Company. And I have a suspicion though I do not state it as a fact, that the very change of the title which appears on the flyleaf is in the handwriting of the old man. That is my understanding.

Mr. Harding: Why it is undoubtedly. I drew everything in this bill, including taking the printed matter and changing it to fit the State court, yes.

Mr. Mayer: We are asking a rule against Mr. Joyner, and if it appears on the record that you are responsible, we want a rule against you. Now it is a fact the old man has not been practicing, has not been a practicing member of the bar, but he has been admitted to the bar for some forty or fifty years and that he himself did this very act. There is Mr. Joyner and Joyner says he acted in a clerical capacity. What does the fact show? The four are together, their offices are together, for twenty years they have been co-operating and

joining in their various cases and the commission or omission of this kind of a bill was drawn deliberately.

258 Mr. Harding: Why certainly.

Mr. Mayer: For the purpose of getting out of your jurisdiction, and there is stricken out of the bill evidently in the handwriting of the old man, the words as shown here (indicating.)

Mr. Harding: Certainly.

Mr. Mayer: He drew another bill striking out the allegations by which that first bill was removed to this court and endeavoring to defeat your jurisdiction and violate both the letter and the spirit of your restraining order.

Now we submit the order to dismiss goes of course but that there should be some example made and that the rule should be extended so as to include the old man because he is the most guilty violator, and with his experience of 75 or 80 years, his conduct is characteriezd as I have indicated, in the 198, in language that cannot be mistaken.

Mr. Harding: There is not a word about it in the volume.

Mr. Mayer: Now, about the Corn Products, I asked the court to read the case in the 198 U. S.....

Mr. Harding: Now a word in it.

Mr. Mayer: To show how the Supreme Court regard the character of this offender.

Mr. Harding: There wasn't a word said against me 259 in it.

Mr. Mayer: Now we ask your honor that some sort of punishment be meted out. To Mr. Joyner, if I may suggest it a fine; because I think that he is the least offensive of the offenders, but as to the old offender, there ought to be a rule to show cause why he should not be sentenced to a few days imprisonment. Only in that way can that great respect which we all have, and which must be maintained to preserve this government, for the Federal Courts at least be preserved; and and I think in my own recollection, in my own experience in a matter, if I am not mistaken, in which this same old offender was indirectly a party before Judge Blodgett, where Judge Barnum was interested and one of the attorneys, where certain papers had been secreted and lost, taken from a safe which the Federal Court thought it had jurisdiction of, I refer to a will case where a man named Hill was either plaintiff or defendant—

Mr. Harding: I don't know of the case at all.

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Mr. Mayer: Now we urge your Honor that some definite example be made of such conduct as this.

260 Mr. Ammen: This motion and petition upon which this rule was obtained, does not hint at any violation of the former order of this court. It sets up that the plaintiffs are the same, that we are working under cover. That is the issue that we came here prepared to meet. That is the averment we are here prepared to disprove. As to our having committed a contempt of this court in violating its former order, we have had no opportunity to meet that issue. We will meet it, we will certainly show, if it appears that there was a violation of that order, we will show by the plainest possible proof, conclusive proof, that it was entirely beyond our purpose or intent to put ourselves in contempt of this court or toward this court in any way.

The Court: When can you make that showing.

Mr. Ammen: Within a short day.

The Court: Tomorrow morning?

Mr. Ammen: We are ready to show conclusively to this court that the idea of avoiding the former order, the idea of going beyond the former order, much less the idea of violating it, the idea of evasion in any way, direct or indirect, of the former order, did not occur to any of us.

The Court: I will have to draw my own conclusions of what the former order means. Were you counsel for that trust company in the first suit, Mr. Ammen?

Mr. Ammen: No. I have always been employed by Mr. Harding.

The Court: In connection with that suit, were you?

Mr. Ammen: I am attorney of record in that suit; I am not however attorney in the second suit.

The Court: Not the attorney of record?

Mr. Ammen: I don't know that I am attorney at all.

The Court: Who did you represent?

Mr. Ammen: I, in the Chicago Real Estate Loan & Trust Company suit?

261 The Court: The first suit.

Mr. Ammen: Yes, sir.

Mr. Harding, Senior: I am not a party, I have not been served by any notice, never have been served with any injunction, I have never seen any paper in any case, I am asked to come in here and explain something. It was not even suggested there could be a contempt. I may say I have been fifty or sixty years a lawyer and I don't know now what the

suit is about, nor do I know what the real order was because there was no notice given to me and I know nothing about it. Certificate of evidence, filed April 30, 1908.

The Court: Do you now represent for the purposes we are discussing, these three other gentlemen?

Mr. Ammen: Yes, your honor.

The Court: Let an order be entered on these four gentlemen to show cause tomorrow morning at ten o'clock why they should not be adjudged in contempt.

Mr. Harding: Will your Honor advise me one moment—

The Court: I say in contempt, I will hear that tomorrow.

Mr. Mayer: Will your Honor enter an order?

The Court: I will dispose of the entire matter tomorrow.

Mr. Ammen: I would like to have this rule, as I understand it, it is to show cause why we should not be adjudged in contempt for violating the former order.

The Court: Yes, that is it. There ought to be no difficulty in drawing that order. The clerk can do it; he has done it before.

Adjourned to ten A. M., the following day, Wednesday, November 13, 1907.

262 Wednesday, November 13, 1907, 10 A. M. Present the same as on yesterday, and said hearing continued as follows:

The answers filed this morning to the rule to show cause entered on yesterday, by George F. Harding, Sr., George F. Harding, Jr., William J. Ammen, and A. B. Joyner, under oath, were thereupon read to the Court, and each of the said answers on file herein is hereby referred to and made a part of this Certificate of Evidence, and a part of the record in this cause, the same as if here inserted in full.

263 Mr. Ammen: Now your Honor, I do not understand why opposing counsel have persisted in going outside of the record in this case. He has referred to opinions of the Supreme Court as though they were proof of facts, he has insinuated some misconduct by Mr. Harding in some proceeding before Judge Blodgett, without any proof. I do not understand why such tactics are adopted before this court. We have no objection to your Honor examining the opinions and other pleadings. We think they are wholly immaterial in this proceeding. We think they are wholly incompetent and immaterial in this proceeding, and there must be some ulterior motive in so persistently talking about them.

Mr. Harding: They don't exist at all.

264 Mr. Ammen: Now we understand ourselves, Mr. Harding Mr. Joyner and Mr. Harding, Junior, if this ques-

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tion of contempt, violation of the order had occurred to us at all, our understanding would have been then as it is now that this order is the ordinary order entered upon the removal of a cause from the state court, enjoining the complainant and his solicitors in that case from further prosecuting that case.

Now there is no need of our contending that it would not apply if colorable proceedings were filed in the same name. That is a proposition of law. It might not be a violation of the order. It might if the proof were clear that it was in fact another suit by the same complainant, in the interest of the same complainant. Why then, there might be some question; but that is not going to arise here. Here we have it affirmatively and clearly shown undisputed and indisputable, that this bill was filed by Mr. Harding as an independent stockholder in his own interest alone.

Now if it be true, as contended by Mr. Mayer, that all stockholders are bound to come into this suit, we do not understand it to be the law, in view of the differences in the former bill, particularly; but even if this is true, that is not a question of contempt, that is only a question of difference of legal rights and the rights to have a new suit instead of going
265 into this one; and that will arise on subsequent proceedings in the different cases, as to whether they should be heard together as one suit. They are all questions to be met and decided, but they do not involve any question of contempt. An explicit answer is made, denying in the most positive terms any intent to violate the order of the court, and we understand that is conclusive on the contempt proceeding. Your Honor will be familiar with the law on that, and we understand that to be the law.

Mr. Mayer: Let me take as premise for reply, that which was said last by counsel. Throughout this controversy I have been met with sweeping assertions from opposing counsel that the law is so and so and that "we have an abundant array of cases to support our positions." That method of generalization does not go down with me. I am from Missouri and want to see the cases; and I have experienced this for the third or fourth time in this court on the prior hearing on the motion to remand and in the State Court before Judge Honore.

Now his last statement is that it is the Federal and the State law, decided by numerous authorities, that where the answers unequivocably and positively and affirmatively show

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that there was no intent to commit contempt, that that is conclusive. That was the last statement, and I take it for my reply because it is applicable to what I have just indi-
266 cated, these sworn assertions that such and such is the law, without support of authority produced in court are ineffectual with litigants of this character.

I hold in my hand a decision just fresh from the press, by the United States Supreme Court, in the 203, and it is the case of the United States against Ship, decided on December 30, 1906. I anticipated that that argument would be made when I heard the answers read, that the respondents had the highest regard and respect for this honorable court and for the individual who is presiding therein. I knew what was coming, that it would be followed by an unequivocal and absolute sworn denial of intent to violate the order of the court, and I sent for the 203 U. S. That case is historical. It was the case, your Honor, in which a negro in Tennessee had been tried and convicted of raping a white woman, in a state court. His counsel was denied the challenge of the array of panel; his counsel was denied the right by Tellerism to move for a new trial, arrest of judgment or for appeal; and some enlightened, broad gauge, manly lawyer in Tennessee had the courage to petition the Supreme Court of the United States for a habeas corpus on the ground that constitutional rights had been denied the benighted, ignorant negro who had been convicted and sentenced to death. The United States Circuit Judge denied the writ, and an appeal was prayed,
267 and Mr. Justice Hollan entered a stay, a restraining order to the sheriff of Tennessee—Hands off—and the night that stay was entered and knowledge had been brought home to the sheriff he conveniently absented from the jail, and a mob took possession and dragged the condemned negro from its portals and hung him to a tree.

The United States Supreme Court directed the law officer of the Government to file an application for contempt against the sheriff and his deputies, sous suponte, without being moved by any litigant. The litigant was dead. They directed the law officer to file a petition to have a rule issued, and to that rule all of the respondents swore that they had the highest respect for the Supreme Court, that they did not intend to violate its order, that they intended in every way to comply with it, that they had no intent to avoid its jurisdiction, nor avoid or violate its order; and they stood by very eminent counsel who had then been brought into the case to assist

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them, such as Mr. Judson Harmon, former Attorney General, and other members of the bar of that type; but the Supreme Court said that is no answer, that a denial of an intent, that an assertion of good faith, is not the law. They cited in support of their ruling not only their own a priori reasoning, but a large number of State authorities. I
268 find among them none of Illinois. And they answer the contention that there was no intent by saying that such an answer could always deprive the court of the power to punish for contempt because the contemnor could always answer that he meant to abide by and not to avoid the Court's orders. And such, your Honor, has been the decision by this court in the teamsters cases, now pending on appeal in the Circuit Court of Appeals and that point was made also in that case. So much for the denial of an intent to violate the court's order.

Now, what are the facts? It has often been said by reviewing tribunals, as well as by nisi prius courts, that there are certain things that the common sense of the court will take notice of without proof and in the teeth of denial. What were the statements yesterday of counsel and of the respondents, and what are their answers to-day? That they were contemplating the filing of a supplemental bill for the real estate company, that a bill had been drawn, that it was in print, for the same complainant, and that when it was suggested that it might be filed for another complainant or that he might intervene in the case pending in this court, what was contemplated? What was discussed? Why, that they would dismiss that first bill; and one of the respondents states in his answer that he advised a dismissal and therefore a motion was made or served to dismiss. Thus there is a con-
269 fession that counsel knew, that the respondents knew that while that first appeal was pending in this court a second suit should not be filed; that if a second suit should be filed, it should be filed in this forum as an amended or supplemental bill, and the bill which was filed in the State Superior Court shows on its face that it was drawn to be filed by the complainant, the Chicago Real Estate Loan & Trust Company. Is that all? It is true that these gentlemen wanted to remain in this jurisdiction? Do not these answers state that to remain in this jurisdiction would prevent the taking of testimony until issues were joined and reference had to a Master, and that therefore, they preferred to remain in a jurisdiction where they pretend they could take testimony

forthwith, and it is stated that on November 4 Judge Calhoun and Joy Morton were in contempt for refusing to obey the order to testify. Certificate of evidence, filed April 30, 1908.

The facts are, your Honor, that the bill was filed on October 19, the amended bill on October 25, and they immediately gave notice to take testimony before a Notary Public who issued subpoenas returnable on November 4, which was the appearance day in the State Court. No order of court to take testimony, no issue, nobody in court, no summons served, no answers, no appearance, no plea, but a bill filed on October 19th and amended on October 25, and notice served to take testimony before a Notary Public immediately in his office
270 before any issue before anybody was in court, and to take testimony of Judge Calhoun, Joy Morton and a third person, all of whom are defendants to the bill, and to take their testimony on the very day that the state rules of court required them to appear.

It is true that on November 4th application was made to this court for an injunction, and it is true that no notice was given; and none ever will be given of such applications, it was a restraining order to stay the hands of such conduct. So much for the subpoenaes.

Now the record in this case shows that they discussed for days and days and months this litigation and yesterday the statement of the eldest of the four was that while he was abroad he had had several months of correspondence with reference to the filing of the first bill and gave advice. It is suggested that the only relation between father and son were those of father and son, that the father is not the attorney for the son, that the son is not the client of the father.

Your Honor knows the story of the Duke who was also a priest of the high church. Your Honor knows how as the duke he led a most profane and immoral life. Possibly not resorting to the courts for divorce, possibly not being sued on the ground of adultery, though leading a most profane and licentious life, his name does not appear in the 198 U. S. as Haring against Harding, but as a high priest he led
271 a most exemplary life; and when some one of his church admirers took him to task for that duplicity and he said that when he was immoral and licentious, it was as the duke and not as a bishop, the parishioner said "Reverend father, tell me, what will become of the bishop when the devil takes hold of the duke?" And that is this case. This thimble rigging, this shifting, this chasing to and fro is no answer

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to the conceded facts that it was contemplated to file a bill to get outside of your jurisdiction.

Do you want any more proof? The second bill filed on its face has eliminated the Federal question from the bill and contains the affirmative allegation, for fear your Honor or the Federal Court may come to the relief of these frightfully, outraged complainants, the Hardings, in that tremendously desperate conflict between the poor downtrodden George F. Harding and the tremendous octopus the Standard Oil Company, for fear your Honor might want to protect them against the outrages conspiracies and dominations and violence of the Standard Oil Company, they say to your Honor: "Please keep your hands off"—we expressly say to you: "We don't want any relief from you; we expressly notify you—Hands off." "But our orator expressly disclaims any right to any relief whatever under this bill and in this cause except under and by virtue of the laws of the

State of Illinois alone, and hereby disclaims that he de-
272 sires and seeks any decree whatever against said defendants to which he is not entitled under the state laws. "Why is that put in? What is there about the Federal law that is poisonous? What is there to the Federal law, where lies this poisoned sting, this anguis in herba? Why necessary to say to this court, "We do not want any assistance from you, we disclaim any right under the Federal statute, and we say we do not want you to assist us?" Why was that put in? Was that put in to have a parallel case by a separate and distinct and independent stockholder? Or was it to get rid of your jurisdiction? What has been the conduct of the parties in this case? First a motion to remand. Perfectly proper, their constitutional right, to get out of this court if the court has no jurisdiction. The motion to remand is argued; it is overruled, and the court retained jurisdiction, and the court entered a restraining order. That was on June 8. Fearful that they would try and violate your Honor's jurisdiction, we filed a cross-bill on June 14th by leave of court.

First a motion to remand overruled. There was unwillingness to remain in this forum. Then we filed a cross-bill to prevent them from getting out of this forum because I anticipated a motion to dismiss. And then on October 2 served with a motion to dismiss.

Now let me say to your Honor—I did not say it before
273 —they made two motions to dismiss, we were served with two motions; I have them in my files; not on the

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same day by any means. Mr. Bangs, will you please turn to both motions whether—and I don't mean to intimate—it had anything to do, whether it was to bring the notice before a particular judge or at a particular time, I don't know and I don't care, but they served us with two notices and I have them here. One is October 1st to Moran, Mayer & Meyer, it was addressed to my firm and to Mr. Sheean, solicitor for defendants and cross-complainants; "You are hereby notified that on Tuesday, October 1st, 1907, at 2 P. M. we will apply to Judge Bethea, for leave to dismiss the bill of complaint." That is October 1st.

Another notice followed, dated October 2nd, addressed to my firm and to Mr. Sheehan, notifying that on Wednesday, October 2nd, at 10 A. M. "We shall before his Honor Judge Kohlsaat move to dismiss."

Now why were these two motions to dismiss given? Were they satisfied to remain within this forum and in its jurisdiction? No. They wanted to dismiss their bill.

Now take these facts: Motion to remand overruled; two notices endeavoring to get out of your jurisdiction, to dismiss—mind you, the cross-bill was filed months before this notice, June 14th, three months, four months nearly. Then the various conferences and co-operative work with a view to getting the bill supplemented or amended, and then to getting a bill in the State Court with a positive declara-
274 tion that they do not want this court to inquire into their case, that they do not want your Honor's relief. Now I say to your Honor this is a palpable, open, unequivocal attempt to avoid your order.

Now let me be charitable, let me be charitable and I will be; let me concede that there was no attempt to affirmatively offend the jurisdiction of this court. Let me concede it. The purpose which these respondents sought to attain was to get away from this court.

Now wherein does the contempt consist? That they deliberately and openly and defiantly wanted to offensively disobey your order? No. But cunningly, schemingly, by trick, by device, by shadowy processes, by tortuous methods they devise a scheme which though violating the order to the spirit would comply with it in the letter. Now that is what they have done.

Another suggestion: Why did the eldest, the senior of the four, he who has practiced—or rather who has been by certificate authorized to practice for fifty years or more—

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Mr. Harding: Sixty, sixty; you better put it right once in your statements.

Mr. Mayer:—this insulting individual to whom
275 experience and gray hairs have added no wisdom, integrity or probity, undertakes to draw a bill which will give him the relief sought in the first bill, but he is going to make some new defendants parties, and he is going to make himself complainant. Why? The first bill on file in this court if it should have jurisdiction is, as I have indicated, a bill on behalf of all stockholders, a bill whose prayer, your Honor, seeks absolutely the relief that this bill seeks. It is true that the venom of the oldest offender did abound more in the second than it did in the first; it is true there are more epithets in the second than in the first, it is true that the name Standard Oil Company is repeated with nauseating emphasis, more evident in the second than in the first bill, but, your Honor, the first bill is filed by a stockholder on behalf of himself and all others, to wind up his company, to appoint a receiver, to reorganize its effects, and to throttle the Standard Oil Company, to prevent it from interfering with the outraged rights of the innocent and inoffensive complainant in that case.

Now the second bill is precisely the same excepting that instead of designating the "Standard Oil crowd"—and your Honor can perceive with what offensiveness and legal acumen these bills are drawn—the corporate entity is called "the Standard Oil Company of New Jersey;" both bills seeking to protect this offended and outraged Harding against the
276 majority of the stockholders of the Standard Oil Company crowd," but in the second case endeavoring to get away from your jurisdiction in violation of your injunction and restraining order. We say a contempt has been committed, we say that the facts concede a violation of the order and that the only response made is: "We did not intend it, we did not regard your injunctional order as being violated by our proceeding." "When I was corresponding from France" says the eldest Harding, "I was advising the Chicago Real Estate Loan & Trust Company; and when I came back and drew the second bill I was advising merely myself, acting as my own attorney. I was in France when the first bill was drawn by George F. Harding, Jr., my son, the president of the company, and Mr. Ammen, his attorney." In the case which I have, which I have your Honor

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in a book, I refer to the Merrit case there was an associate federal tribunal where a second bill was merely sworn to by the same person who swore to the first bill. Not even signed by the same solicitor, but merely sworn to by a different solicitor, one bill being filed in a state court, a court having abundant jurisdiction, and a prior bill upon removal, the judge in that case said "This is a contempt of my injunctional order, hands off," and ordered an instant dismissal.

There, your Honor, was a case signed by different solicitors, by different complainants, but merely sworn to
277 by a person who knew the facts in the first bill and knew the facts in the second bill and the court said that it was an administration for the identical purpose and of the identical interest, and a violation of the order.

Now I suggested yesterday to your Honor, and I repeat the suggestion now, as to Mr. Joyner it was my conviction then and my conviction has been strengthened today, that he is an innocent dupe, that his principal offense is stupidity and probably necessity, whose office is in their office, who has been used by them as their attorney or solicitor in this litigation and also in other litigations. Not a member of the bar of this court—not an offense, but indicative of the fact that his practice is circumscribed to the local tribunals, and that his practice is circumscribed, his clientele is small and circumscribed. In his necessities, it is my judgment that it is through ignorance and weakness that he has been used as a dupe and as a tool.

Now with reference to Mr. Ammen, who says he has been a member of the bar for twenty years of this court it is my judgment, your Honor, that his answer shows enough to indicate that he was not a party actively participating in the filing of that second bill. We have no evidence to contradict what Mr. Ammen says in his answer; we have no evidence to dispute his allegation that he did not know
278 of the filing of that second bill. But he does show that he knew that the second bill was in contemplation, that he himself was drawing a supplemental or amended bill; but I do not believe, in a case of this character where the evidence ought to be strong, that Mr. Ammen has violated to such a degree the order of this court that would justify any severe punishment, if any.

I think that Mr. Joyner had the actual knowledge, and that a small fine ought to be inflicted upon him.

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But I think with reference to the eldest of the four defendants who is confessedly a fifty or sixty year practitioner, who says he drew this bill for himself, who says he knew of the first bill, who advised with reference to it, who, your Honor, is not merely a solicitor but a party in interest, the situation is different. He has neither the excuse of ignorance, of necessity nor innocence, and he came in here yesterday, your Honor will recall, and interrupted Mr. Ammen by saying: "I am the responsible party, if there is any responsible party. I did it" said Mr. Harding.

And to his son, I do not think the evidence shows that his son was a party to the filing of the second bill; but I think that the evidence shows that Mr. Joyner was not only a party but he signed it; that he acted as he stated in a clerical capacity. I am very sorry for him your Honor,
279 though I have contempt, I always have sorrow for a professional man who by necessity or by inexperience or by lack of proper environment is put in a position where he can be used by designing knaves; but as to the chief knave, he has no such excuse.

Now it has been suggested by Mr. Ammen that I have traveled out of the record. I have not, your Honor. In the petition which we filed we refer to those cases and we give the names of the parties and the pages, for the purpose of showing why the Real Estate Loan and Trust Company was used.

Now you will remember that yesterday George Harding, Junior, said that his father had not been president for many years, at least ten years, and then you will recall that he said a man named Kelloe, or something like that, I have forgotten the exact name now, was president; but now I find that George F. Harding has been president or connected with the company until within seven years.

Mr. Ammen: If it is material I can get the dates.

Mr. Harding: He is quoting statements and testimony here that are a series of false statements.

Mr. Mayer: Your Honor, I am taking the answer, which is supposed to have been drawn with a great deal of care.

Mr. Harding: But you are comparing it with something else that is not true.

280 Mr. Mayer: Your Honor has heard the statement from the lips of that individual, that this is not true, and we will hear it again before we get through. His answer however is that it is seven years.

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Now why did we refer to this case? I would not travel out of the record one bit but the cases are referred to in the petition filed. You will remember your Honor yesterday saw a certified copy from the Secretary of State as to the change of the corporate name, and it was signed by George F. Harding, president in 1894. The litigation began in 1890. I am speaking from the book without reading the case, I am speaking from the books referred to in the petition, when he was sued for separate maintenance in the State Court; and his defense was there had been no desertion, and the reply was that his wife was living separate and apart from him because of his adultery.

From 1890 to 1893 that litigation proceeded. I am strictly confining myself, your Honor, to those cases as they are printed, and what I am now saying I am taking from the 198 U. S., Harding v. Harding. The wife contended that his life was licentious and adulterous and that therefore when she left him it was not desertion.

He litigated from 1890 to 1893, when he filed—

Mr. Harding: If your Honor please, I object to the whole statement as improper and immaterial. I am ready to
281 discuss it if you wish to, but he does not read the statement tself, he doesn't read the case but simply is stating his inference.

The Court: I assume that it has something to do with the case.

Mr. Mayer: Yes, your Honor, it has.

Mr. Harding: I would like him to read anything that has anything to do with this motion.

Mr. Mayer: Your Honor, I am stating it accurately, without deviating one punctuation mark, the facts as stated by the United States Supreme Court in Harding v. Harding.

Mr. Harding: Did they say anything about this matter? Not one word.

Mr. Mayer: No, your Honor, the Chicago Real Estate Loan & Trust Company is not mentioned in that opinion, but it will not take me long to show the connection.

Mr. Harding: That is what your Honor says, show the connection.

Mr. Mayer: In 1893 he filed in that case in the State Court a document which is set out in haec verba in the Federal Supreme Court reports in which he said he now consents to a decree for maintenance and adds that he is offering to pay twice as much as his wife is entitled to. He was married in 1855. With a record of 52 years, the wife refused to accept.

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Mr. Harding: I object. There is no pretense that
282 the name is in there, or that there is any connection; it is just pure scandal. I must discuss it, of course, if your Honor requires it,—

Mr. Mayer: It is scandal, I regret to say you brought it into this case.

Mr. Harding: Well, I am no such liar as you are.

Mr. Mayer: Your Honor will perceive the character of the man I am dealing with.

The Court: I do not want to notice, but I will have to take notice if that kind of expression is used again in this case. I do not sit here and allow litigants or lawyers to call each other liars in this court.

Mr. Harding: Your Honor—

The Court: You will have a chance to leave, but under no circumstances do I want you or any other lawyer to call anybody in my presence a liar.

Mr. Harding: Very well.

Mr. Mayer: In 1893 there was filed the statement which I have indicated, and which is set out in the report, that his wife was unwilling to accept that settlement for fear it would leave on the record an inference there had been no decree in her favor for maintenance on the ground of desertion—

Mr. Ammen: If the court please, I object—

The Court: Let us get along; I do not know what the object is, I assume counsel does, and we have been twenty
283 minutes trying to get past this. If there is anything in it I will find it out very shortly.

Mr. Mayer: In 1893 or 1894 the State Court referred the case to a Master, and the litigation went through the Appellate Court twice or three times and to the Supreme Court twice. In 1904 he was President of the Real Estate Company and in 1893 this stipulation was filed by him. In 1896 a decree of alimony was rendered.

Thereupon he moved to California, and there filed a bill for divorce. Now the next thing was the attempt of the wife to get her alimony. I think there were three appeals to the Appellate Court and two to the Supreme Court after this first litigation. Then he moved to California and there sued his wife for divorce on the ground for desertion. The California Court gave him a decree, and it was taken to the United States Supreme Court and reversed on the ground that the California Court had violated the Constitution of

the United States. That is the exact language of the Supreme Court: Certificate of evidence, filed April 30, 1908.

"This being the case it follows that the Supreme Court of California in affirming the judgment of divorce failed to give to the decree of the Illinois Court the due faith and credit to which it was entitled, and thereby violated the Constitution of the United States."

In other words, he endavored to use in the California case as a ground of divorce, the desertion which was
284 the very ground upon which the wife had based her bill in Illinois, justifying the separation on the ground of his conduct, and secured a decree.

Now I say these dates fit in with what this record shows Young Harding told your Honor yesterday that he bought the stock of his father. I have no doubt if we came to a close investigation of that question we would find out where young Harding got his money with which he bought from his father the stock and if we were to search into the evidence given in the separate maintenance suit, there would be disclosures which would undoubtedly show that the Chicago Real Estate Loan & Trust Company, of which George F. Harding Sr. was the President, of which his son is now President and of which his other son Abner C. Harding is director, is Mr. George F. Harding in disguise. That is my contention, that it is the alter ego, it is the alias of George F. Harding.

Now we submit urgently, your Honor, that the conduct of Harding Senior justifies the infliction of a substantial punishment.

That as to George F. Harding, Junior, there ought to be no punishment because I do not think the record convicts him.

There ought to be some fine against Mr. Joyner because he knowingly and of record is a party to the violation. (Here follows argument of Mr. Mayer on the legal power and right of the court to enjoin the prosecution of the second suit.)

285 Thereupon the Court took the said matters involved in the said hearing as above shown under advisement.

The court further certifies that he it received in Indianapolis, while holding the Federal Court there, on or about November 21st or November 22nd, 1907, leave thereto having previously been given, a memorandum brief entitled, "Points submitted by George F. Harding, Sr.," and also containing this notation: "Note: The brief of Mr. Ammen, on behalf of all

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respondents, is submitted under separate cover," and that said brief of George F. Harding, Sr., was accompanied by the brief of William J. Ammen, which was entitled, "Brief for Respondents," and bore this notation: "The suggestions of George F. Harding, Sr. are submitted under separate cover."

The court further certifies that at that time he had under advisement said motion for an injunction and also the rule to show cause, which was entered of the court's own motion.

The court further certifies that in said brief of said George F. Harding, Sr. he took, among other positions, the position that "the plaintiff cannot hold the stock described and cannot enforce any rights under it or prosecute this case."

The court further certifies that at that time said William J. Ammen, the then solicitor of record of said complainant, had in open court taken the position and made the argument that said complainant could hold the stock described in the bill and could enforce its rights under said bill and could prosecute said case.

286 The court further certifies, at the request of George F. Harding, Sr., and William J. Ammen, that after the court had heard the arguments upon and taken under advisement the motion for an injunction herein, and which motion is covered by the injunctional order entered herein on December 13, 1907, and some time after December 1, 1907 but before December 13, 1907 said George F. Harding, Sr. and William J. Ammen inquired of Kenesaw M. Landis, the Judge of this Court after he had adjourned court for the day, whether he, the court, would hear a motion to remand to the State court the cause entitled George F. Harding Sr., v. Standard Oil Company, et al, a copy of the bill in which cause is a part of this certificate of evidence; that no notice was served upon or given to any of the defendants, or their solicitors of said matter, and nonne of the defendants and none of thir solicitors was present at the time, or had any knowledge or information about the same; the court then and there said to said George F. Harding, Sr. and William J. Ammen that they should serve notice upon the solicitors of the defendants of what said Harding and Ammen desired to present to the court, and that within a few minutes thereafter the court, after reflecting upon the matter, directed the deputy clerk of this court to telephone to said Harding and Ammen that the court deemed it the proper thing to do to postpone any hearing or action in the matter about which said Harding and Ammen had spoken to him, as aforesaid, until the

court had disposed of the said motion for an injunction which the court then had under advisement. Certificate of evidence, filed April 30, 190

The court further certifies that the deputy clerk of this court did so telephone to said Harding and Ammen, and
287 that at no time did said Harding and Ammen, or either of them or any one on behalf of said George F. Harding, Sr., submit or present to this court a motion to remand said cause, except the motion to remand said cause which was ever presented to this court or filed in said cause is the motion to remand filed in said cause in the Clerk's office of this court on December 23, 1907, and not until December 26, 1907, was said motion to remand brought to the attention of the court.

288 And afterwards, namely, on December 13, 1907, again came the same parties and the Court orally announced its decision, as follows, and the following proceedings were had, namely:

The Court: In the matter of the Chicago Real Estate Loan & Trust Company versus the Corn Products Company, and others, and in the case of George F. Harding versus the Standard Oil Company, and others; the first being a bill originally filed in the Circuit Court of Cook County on the twentieth day of May, and removed to this court; and the second being a bill filed in the Superior Court of Cook County on the seventh day of October, filed in this court on presentation of transcript of record of the State Court docketed here, in which first suit there are pending a motion for stay order against the prosecution of the second suit and motion to compel dismissal of the second suit by the plaintiff, and a certain matter of contempt, the rule having been entered by the court, of the court's own motion, on the hearing of the two first named motions. The facts in this situation appear to be that during the time preceding the filing of what I would call the first bill, being the Chicago Real Estate Loan and Trust Company bill, there was a negotiation or conference between certain gentlemen interested in the second bill and in the first bill, respecting the filing of a suit to bring about a re-organization of the Corn Products Company. At that time there were two holders of the shares of that corporation, which is a New Jersey corporation; one of the holders of these shares was the Chicago Real Estate Loan & Trust Company, whose president was George F. Harding, Jr. Another holder was George F. Harding, individually, the father of the president of the Real Estate Company.

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The first bill was finally filed in the name of the Chicago Real Estate Loan & Trust Company. After conferences, as I say, between the president of that company, rather between his counsel and himself and his father, then in Paris, the conferences being conducted by mail with the father who was absent, as a result of these conferences, finally the bill was filed. It was removed to this court, on the ground that 289 there was adversity of citzenship, and on the ground there was a separate controversy, and a federal question involved, the point being that the Sherman Anti-Trust law of the early nineties was necessarily involved in the litigation in the fixing of the rights of the parties. The court overruled the motion to remand the first case, mainly, as the court recalls on the ground last stated, namely, a federal controversy arising under the federal laws.

Shortly after these things happened, while this first case was pending in this court, the second bill was filed. After a motion had been filed in this court and notice to bring up the motion had been given by the plaintiff to the defendant in the first case in this court to dismiss that case, the second bill was drawn. The solicitor for the Chicago Real Estate Loan and Trust Company, complainant in the first suit, is the solicitor of record of the complainant in the second suit. The second suit, like the first, is a bill, which, among other things, seeks the injunction process of this court to a very broad extent, involving a great many other defendants in connection with the future existence of the Corn Products Company, which is the concern whose stock is the subject of the litigation in the first suit.

The second suit, like the first, also seeks the appointment of a Receiver—the winding up of the Corn Products Company, etc., etc.

The first suit contained a number of allegations to the effect that the defendants in that suit, corporations and individuals, had been intriguing and conspiring with what is called in the first bill, The Standard Crowd—the Standard Oil People. The Standard Oil Company is not a party defendant to the first bill. The second bill names as the first defendant, the Standard Oil Company of New Jersey, which is classed with the other defendats of the second bill individually, largely the same as the defendants in the first bill, as conspirers and intriguers in connection with a certain enterprise, the ultimate object and purpose of which was the wrecking of the Corn Products Company, and the absorption of its

property by the Standard Oil Company of New Jersey, and its co-defendants. Certificate of evidence, filed April 30, 1908

It appears that the president of the Chicago Real Es-
290 tate Loan and Trust Company had but little to do with the filing of the first bill. His attitude in respect to the first bill, as disclosed by his oral replies to the questions put by the court, is a strange attitude for the president of a corporation who has filed a bill of this character.

The admission by Mr. Joyner, solicitor for the complainants in both bills, in substance, is that the second bill, which was originally drafted to be filed in the name of the Chicago Real Estate Loan and Trust Company, was drawn without the knowledge of the president of the Chicago Real Estate Loan and Trust Company; although the specific reply of Mr. Joyner, when the court asked certain questions here on the different arguments, was, that the matter had been talked over between Mr. Ammen, and Mr. George F. Harding, Sr., and Mr. Joyner, counsel for complainant in both bills, and had been decided to file the second bill in the name of the Chicago Real Estate Loan and Trust Company, which, of course, taken with the statement of George F. Harding, Jr., that he knew nothing about the second proceeding, except a casual reference to it by his father, or his father's counsel, has a strong tendency to indicate that the interests behind the first suit were the interests behind the second suit, and that both suits are under the same control, and not independent suits. In other words, the conclusion is irresistible, to my mind, that the moving spirit behind the first suit is the moving spirit behind the second suit; and that the fact that the Chicago Real Estate Loan and Trust Company's name was rubbed out and an individual's was put in to the extent that this is, in effect, in the situation, serves only to confuse rather than to clarify and get at the facts.

There was an injunction issued in the first case against the further prosecution of that suit. That injunction ran against the plaintiff in that suit, and its officers, stockholders, directors, agents and attorneys.

The complainant named in the second bill was not specifically named in this injunction issued in the first suit; however, in the view which the court has taken of the identity of these two suits, the omission of mentioning the name of the complainant in the second suit can hardly be regarded as
291 failing to cover the complainant in the second suit involved, as the complainant clearly appears to have been responsible for the institution of the first suit.

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The court is clearly of the opinion on these facts, that there was a violation of that order of injunction. However, the court, of the court's own motion, will discharge that rule without the infliction of punishment on anybody. The court will perpetuate the order restraining the further prosecution of that suit, which order will be enlarged to include the complainant by name in the second suit, and in that position the litigation will remain until the further order of this court.

Mr. Mayer: In a similar case before Judge Kohlsaat there was a prayer of dismissal.

The Court: I have disposed of this matter. This extends now to that as a disposal and some order should be entered here.

Mr. Ammen: The second suit had been renewed after this motion was made.

The Court: The order of dismissal in the second suit?

Mr. Mayer: It is covered by the order.

The Court: I have intimated that this settles the case for the time being as to both suits; the order stands as to the second suit under like circumstances; I want to consider the question a little bit further before I enter the order. That may be taken up upon motion.

Mr. Ammen: The order which is to be entered now will be in the first suit.

Mr. Mayer: The order we will offer will be an order in the first suit perpetually enjoining the second suit.

The Court: I think it ought to be in the first suit.

Mr. Ammen: Will a copy of it be sent me?

The Court: Yes of course.

Mr. Harding: If your Honor please, the motion to remand, I desire to call your Honor's attention to the fact that we wish to argue and present this question at your earliest convenience.

The Court: This disposes of that question.

Mr. Harding: Without argument? I mean the ques-
292 tion of remanding.

The Court: I shall of course dispose of the question on which the Court heard arguments at the last hearing till something is done under the order restraining the further prosecution of the suit, dispose of the motion to remand. In other words, the motion to remand is not in order now in view of what the Court has done in this litigation.

Mr. Harding. We will study on that. In the meantime, we want to make a motion to remand and ask your Honor to hear.

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The Court: We will come to that after this order has been entered, unless it is modified, it will not permit the consideration of the motion which counsel now indicates.

Mr. Ammen: It is an endeavor to preserve the rights of the parties in the other case.

The Court: The order can be drawn. And you can communicate with your adversaries in regard to it.

Mr. Ammen: When will this be done?

Mr. Mayer: I am going to New York this afternoon and will be there through next week, will be away seven or eight days.

Mr. Harding: If your Honor please, we think this is an attempt on the part of the defendants to prevent this case being heard. We are, therefore, against all forms of further delay. We are going to seek a trial of this case as soon as possible; there is a great deal of money involved.

The Court: What will seven or eight days amount to in an important matter in connection with a litigation of this kind. This order for injunction will be presented by counsel a week from next Monday and counsel for the complainant and defendant will then be present at half past two.

Mr. Mayer: Without any notice?

The Court: Without any notice.

Mr. Harding: Now, will that prevent us from going ahead with our motions?

The Court: When the order is entered, you understand, there will be plenty of time to proceed with your motion,
293 so long as this order stands.

Mr. Ammen: We would like first to see the order to have a copy of it before we come in here.

The Court: Oh, certainly, it will be furnished you a week from Monday by your adversaries. You can come in the afternoon.

294 The court further certifies, at the request of George F. Harding, Sr. and William J. Ammen, that after it had entered in said first suit the said order of injunction on December 13, 1907, the said George F. Harding, Sr. brought to the attention of this court said contemplated motion to remand in language as follows:

"Mr. Harding: If your Honor please, the motion to remand, I desire to call your Honor's attention to the fact that we wish to argue and present this question at your earliest convenience."

Upon which the court ruled that the motion to remand was

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not then in order in view of what this court had done in this litigation, viz: the entering of said injunction. To which said Harding replied:

"We will study on that. In the meantime we want to make a motion to remand and ask your Honor to hear it."

Adjourned to 2:30 P. M. Monday, December 23, 1907.

295 And, afterwards, namely, on December 23, 1907, at the hour of 2 o'clock P. M., again came the same parties, and thereupon the following proceedings were had:

Mr. Ammen: If the Court please Mr. Mayer had drafted an order to be entered in the case but did not furnish us with a copy of the same until 12:30 today, and I would like to have two or three days in which to furnish to him our draft of the order as we think it ought to be entered, if entered according to your Honors opinion, and we object to the order as prepared by Mr. Mayer.

It was thereupon agreed that Mr. Ammen would furnish to Mr. Mayer such draft of order on or before December 25 1907, and that the parties should appear before the Court again at 10 A. M. on Thursday, December 26, 1907, with the view of having the terms of the order to be entered then settled by the Court.

And, afterwards, namely, on December 26, 1907, at the hour of 10 o'clock A. M., again came the said parties by their said solicitors, and thereupon proceedings were had in said cause as follows:

Mr. Ammen: If the Court please I have here a motion to dismiss the suit.

(Said motion is hereby referred to and made a part of this Certificate of Evidence.)

Mr. Mayer: I don't think this motion to dismiss the suit is going to supplant what your Honor has set for hearing this morning?

The Court: What is that motion?

Mr. Ammen: This is bringing up the motion that was filed October 1st.

The Court: That motion is denied, and complainant excepts.

Mr. Ammen: I have numbered that motion Number 1. I have here a series of four others, numbered, respectively, 2, 3, 4, and 5, which I desire to present in order. I have authorities here in support of these motions.

The Court: No, make your motions; I will rule on
296 the motions. I can take care of the motions in one minute.

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Mr. Ammen: Number 2 is a motion by complainant without waiving its objection and exception to the Court's action in overruling its Motion No. 1, is a motion to dismiss the bill at the cost of the complainant. It leaves out the words "without prejudice", contained in Motion No. 1.

The Court: Denied.

Mr. Ammen: Do you want to hear any authorities on it?

The Court: No, the situation of this litigation is such that the Court is familiar with it.

Mr. Ammen: The third motion states that it is made without waiving either one of the former two motions, and without waiving any of the objections or exceptions to the action of the Court in overruling such former motions, and this third motion is a motion by the plaintiff to dismiss the Bill of Complaint at its costs, without prejudice to right of cross-complainant to prosecute his cross-bill herein.

The Court: Denied.

Mr. Ammen: The fourth, states that it is made without waiving either of the former three, and without waiving the objections or exceptions to the action of the Court in overruling the same, and this fourth motion is a motion to dismiss the bill of complaint as to all defendants thereto, excepting Joy Morton, at the cost of the plaintiff, without prejudice, and without prejudice to the right of said Morton to prosecute his cross-bill in this cause.

The Court: Denied.

Mr. Ammen: The fifth, states that it is made without waiving either of the former four, and without waiving the objections or exceptions to the action of the Court in denying the same, and this fifth motion is a motion to dismiss the bill as to all the defendants except Joy Morton, at the cost of the plaintiff. In support of these several written motions, in order, I have here the affidavit of George F. Harding, Jr., the president of the Chicago Real Estate Loan & Trust Company, the plaintiff in this suit, setting up, in substance, the reasons for thus moving to dismiss the suit, including the good faith of the suit in the first place; the efforts heretofore
297 made to dismiss it, and setting up the reasons and grounds for these motions to dismiss, and, in that connection, calling particular attention to the fact that the answer and cross-bill of Joy Morton attack the right of complainant to prosecute this suit on the ground that under the law it cannot hold stock in another corporation, and setting up that the president of the company, who makes the affi-

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davit, is now advised and believes that it is doubtful whether the plaintiff can prosecute this suit, and, on that account together with the other reasons stated in the affidavit, the plaintiff wishes the suit dismissed and has directed accordingly. I would like to have this affidavit considered by the Court.

298 Mr. Mayer: I object to the filing of that affidavit, and I will give my reasons to the Court if the Court wants to hear them.

Mr. Ammen: I am merely asking to have it considered in support of these motions, and would like to read it, if your Honor desires to hear it.

Mr. Mayer: Are you through with your motions?

Mr. Ammen: Yes.

Mr. Mayer: Now, with your Honor's permission, I will answer. This is pure, naked trickery. On the 12th of November your Honor had a returnable rule, and you will remember, and the record will show, that they came in and said they did not have the answers to the rule ready, and your Honor gave them until November 13th. On November 13th the hearing ensued. Your Honor rendered the decision on December 3rd, I think, or 5th—I have forgotten the date—and after your Honor had announced your ruling,—but of course the order that your Honor will enter on that ruling

299 will be entered as of that date,—and when we came in here last Monday with the order for your Honor to enter, they said that they did not have time, that it was served upon them, which was true, between 12 and 1 o'clock, and that they wanted a short time to prepare their form, to conform their form with the order; and your Honor put it off until today, and said they should serve me with a copy.

Now, on yesterday, when I came to return from my Christmas dinner, I found in my room at the hotel one notice of motion, which was to dismiss without prejudice; and an affidavit of George F. Harding, Jr., as to why the motion to dismiss had not been pressed; and a draft of the proposed order. There have been here made five motions. Of one motion I had notice—I had notice yesterday afternoon.

But there has been committed on your record rank perjury, and I am going to show it your Honor in less than two minutes. In the affidavit which they now desire to file, of George F. Harding, Jr., he says that the motion to dismiss was filed on October 1st. That is true. It was filed without any leave of Court and without any order; and he

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states in that affidavit that the reason that he did not
300 press the motion to dismiss was, first, because Judge Bethea was busy and refused to hear it, "because of that and other reasons". I use the language of the George F. Harding affidavit. That then they wanted to go before Judge Kohlsaat, but, somehow or other, he was not in court that day. But the affidavit sets up that we agreed that we would appear in court without notice upon a telephone communication that they wished to call it up.

From October 1st until now nothing has been done about that motion to dismiss. The motion was not filed until December 23rd—I may have the exact date later on—and between the time that your Honor adjourned the entry of the order on the injunction and now, they slipped in that motion and the motion to remand.

Now, in George Harding's affidavit—

Mr. Ammen: The one I just offered.

Mr. Mayer: The one you just offered.

Mr. Ammen: Your Honor, now I object to his considering it unless it is received by the Court.

Mr. Mayer: I am objecting to its being filed because it puts rank perjury on the record. That is why I am objecting to it. George F. Harding, who makes this affidavit, president of the Real Estate Company—I want to read
301 just a few lines of it, and then I want to read a sworn answer that is one file, that went to the rule for contempt, and if your Honor does not pronounce rank perjury as having been committed in your court, it never has been and never can be committed; and the thing takes a much more serious aspect than a mere rule for filing an ordinary injunction.

Now, the affidavit of George F. Harding, Jr.,—which, by the way, your Honor, they have changed this morning and notified me that they have substituted a last page,—I am reading from the affidavit of which they served me with a copy yesterday afternoon. And if your Honor will indulge me, I would like to read substantially the pertinent parts of this curious and inoculating poisonous instrument:

"The undersigned, George F. Harding, Jr., in behalf of the complainant in the above entitled cause, and in support of the motion of the complainant". This is in the Chicago Real Estate case, your Honor. "Respectfully represents unto your Honor the following facts: That he, George F. Harding, Jr., was at the time of the beginning of the suit and ever

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the one before, and this gentleman boasted, you remember, that he had fixed it so that it could not be dismissed, that it must stay there. Then he sets up this sham, the sham of the old case as the reason why—

The Court: There is a very plain and easy way to disentangle this snarl, for the creation of which the Court has no possible responsibility, but which has been created by the parties themselves. That way is to reverse the order of this Court restraining the prosecution of the second suit.

Mr. Harding: We have given them our draft of the order to be entered.

The Court: You have no ordinary, conventional situation. It is not a case where the ordinary rules that control the complainant's right to dispose of his own bill obtain, and, as I say, it is a situation or predicament or entanglement for which the Court has no responsibility. The parties themselves have created it.

Mr. Harding: We come straightforwardly. We filed the first straightforwardly. The second bill was filed by that party who has a right to file it.

The Court: Why, I have passed on that question; I have heard all that, on the question of the propriety of that second bill.

Mr. Harding: We gave the other side the order that your Honor required we should give, corrected as we thought it should be corrected. Then we thought that this motion to dismiss this case, which we had made originally was the only way out of the trouble, the snarl, as stated by your Honor, and we have taken straightforwardly, the right, exercised the right, as every complainant has, to dismiss that case. Why not? I don't know why not? If we can't dismiss the case your Honor will know why. And can they hold us here? Can they put your Honor in collision with the Supreme Court of this state, who hold that the complainant in this case cannot maintain an action? There never was a case in this Court which gave this Court jurisdiction. Did your Honor consider that? I don't know that it was presented to your Honor.

The Court: Yes, it was presented.

306 Mr. Harding: Then your Honor has decided that the principles of the Supreme Court shall not be followed?

The Court: No. I have decided this: When five or six gentlemen get together and get up a lawsuit and bring it and it gets into my court, I will insist that it is their lawsuit

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and they cannot thereafter, when dissatisfied with the means they have deliberately employed to accomplish their purpose, to procure the relief they desire, they cannot thereafter, by the use of another name, in another court, complicate the situation which has been created by bringing the suit.

Mr. Harding: That, your Honor has decided. With all due respect, we stand by that. We have got the order prepared and submitted to the other side.

The Court: As long as that situation is in this court, that is the law of the situation. There is just one way to get it disentangled and that is to take it to the reviewing court.

Mr. Harding: Your Honor would not compel us—

The Court: I am not compelling you, Mr. Harding, to do anything.

Mr. Harding: This difference between your Honor and the Supreme Court of the state upon this proposition, that this corporation has no right to file this bill; that difference has led us to say, why the only course out, the only way for us is to dismiss the case. Is there anything against that?

Mr. Ammen: During the last several weeks this Fish-Harriman controversy has been on in the Superior Court, and the authorities have been collated and cited on both sides, as to the right of a corporation to hold stock in another corporation in this state. We have become very doubtful and are inclined to fear and believe that the law is against us on our right to hold this stock. Mr. Mayer's client has raised that question in this first case and says that this plaintiff cannot prosecute this suit because it is a corporation incapacitated to hold this stock.

Now, this affidavit sets up that in view of this situation, and on the belief that the law is probably against us on
307 that, that we are unwilling to further prosecute this suit, and therefore we move to dismiss this suit.

I have the authorities here, that where the defendants have not become entitled to some affirmative relief, either upon proof take nor upon a tender made by the bill, the original bill, and an answer accepting the tender, or something like that, that a motion to dismiss is in order and should be allowed, and it is an abuse of discretion not to do it. The authorities are absolutely uniform, including the Supreme Court of the United States. The mere danger of another suit is no objection at all to a motion to dismiss.

The Court: I am familiar with those authorities. No

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sane man can have a quarrel with those authorities. The trouble is they have not anything to do with this situation.

Mr. Ammen: Unless the defendants have become entitled now to affirmative relief in this case—

The Court: I think if you will calmly sit down some day and take your first bill, which you gentlemen drew and filed with knowledge of the law of the land and a knowledge of the fact, and then take the proceedings under the first bill; then take your second bill, which you same gentlemen drew deliberately with the knowledge of the law of the land, and the same knowledge of the facts—

Mr. Harding: I didn't draw the first bill. I have not been in this country; it is two years now since.

The Court: —and then follow up the proceedings under that second bill, that you will then, if you examine the Supreme Court decisions that you have referred to, you will see how they do not, how they were not written by Justices who had in mind such a situation as this.

Mr. Ammen: In that view, we ask leave to read in evidence this affidavit of George F. Harding, Jr.

The Court: This order to restrain the prosecution of the second suit is of the 13th of December; the motions which subsequently follow are plainly out of order.

Mr. Ammen: They are made in the first suit, not in the second.

308 The Court: I understand that perfectly.

Mr. Harding: We should like to have your Honor advised by the affidavit of the facts touching our inability to get that hearing for a long time.

The Court: We went all through that prior to the entry of the order of December 13th.

The Court: Those motions have already been made. I ruled on the motion to remand in this case months ago.

Mr. Harding: In the first case, but I am talking about the second case. The motion to remand in the second case has been filed. You say it is substantially determined by your ruling in the other. That record don't contain any hearing on that point. If your Honor will kindly make an order upon that. We cannot get out of this Court until we get that refusal to remand.

The Court: The order restraining the prosecution of the second suit is of the 13th of December. I will allow the record to show these motions to dismiss the first suit made today. I will not allow the affidavit to be filed. You may save

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your point on that. I think it is unseasonable, it is entirely out of place now.

Mr. Ammen: This is an interlocutory order. We except to the Court's rulings and to the refusal to receive in evidence said affidavit of George F. Harding, Jr.

The Court: This order is of the 13th day of December.

Mr. Mayer: I have drafted the order.

Mr. Ammen: And we have drafted one.

Mr. Mayer: I object to their order in every form and every line.

Mr. Ammen: And we object to their order in every form and every line.

Mr. Mayer: Well, I have drawn that order following your decision, line for line.

Mr. Harding: The gentleman's order is very objectionable. It recites various things that are untrue, and here is the order as we have corrected it and noted it here. It is in exact accordance with your Honor's judgment and your Honor's opinion. The other is confusing and improper. It recites a variety of evidence presented and heard, and
309 so on, and that is not proper in this order. Here was a rule to show cause. We appear. It is decided. Neither the rule nor the decision appear directly or distinctly. There was attachment for contempt and answer,—we present them both in our order,—and judgment upon it, I believe I gave your Honor the order that we drew.

The Court: (Reading) The Court finds that by the institution of said suit against the Standard Oil Company of New Jersey— Is that what the Court found?

310 Mr. Harding: No, sir, nothing like that. The court stated that in its opinion it was clearly of the opinion from the facts stated to the Court, that the order of the injunction had been violated. It did not state by whom and whether knowingly or willfully.

The Court: Could there be any question about whether the Court meant, whether it was a conscious or unconscious violation?

Mr. Harding: Nothing stated.

The Court: Could there be any question what was in the Court's mind, whether it was conscious or unconscious?

Mr. Ammen: Mr. Mayer admitted on the record that I did not have anything to do with the second case?

Mr. Mayer: No, sir.

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Mr. Harding: Your Honor will also pass upon the other motion, the motion to remand in the other case, of record.

The Court: The second case stands in whatever situation this order finds it.

Mr. Harding: We offered a motion to remand and filed it. We want that motion simply passed upon by your Honor.

The Court: The order of the Court in the first case restrains the parties from proceeding in any other case with this litigation; holds the first case in this court, until this order of injunction is reversed, in whatever posture the order finds the record in the first case. I don't care to go on and enter any other orders in the second case, on motion to remand, or any motions in the second case.

Mr. Harding: We want an order overruling it. We have filed the motion. We cannot take anything up. The cases are independent upon this record, except in the opinion of your Honor. We moved to remand long before the entry of this order, and now we only want an order upon that motion; if you say it is too late, or whatever you are pleased to say.

The Court: Did you ask me to remand before this Court came—

Mr. Harding: During the hearing.

The Court: While this matter was being heard—this motion in the first case was being heard?

315 Mr. Ammen: Yes, in this respect, I remember this one thing that occurred. We asked your Honor if we could give notice—

The Court: Afterwards.

Mr. Ammen: That was pending this hearing.

The Court: You came here after the matter had been submitted to the Court on this application.

Mr. Ammen: Yes, before the decision.

The Court: Yes, now the view of the Court in this matter is this, as I have indicated four or five times. The view of the Court is that this order restraining the parties from going on with the first case applies to the parties here and in the State court and anywhere, going on in the second case.

Mr. Ammen: In our draft of the order we asked that this be without prejudice to the motion to remand.

The Court: I won't enter that order.

Mr. Ammen: I merely want to call the Court's attention to that. After they got this injunction from Judge Kohl-

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snat and ruled us to show cause why this second suit should not be restrained, they removed the second case to this court. Now the view of your Honor is that although they took that step after they got that restraining order, we must leave it there. Are we not liable to be thus prejudiced in that suit?

The Court: Not if you read the order of injunction. The motion to take up these other matters may come along when this motion, when this order which the Court has entered has been modified under an order of the court authorized to give instructions to this Court.

Mr. Harding: Then we are locked up entirely until there is a hearing. Can't we move to dismiss in the first case?

Mr. Mayer: That has been overruled.

Mr. Ammen: Will this order state that we have objected and excepted to the terms of this present order just entered.

The Court: The record will show that.

Mr. Harding: It will show our several motions to dismiss.

The Court: You have made several motions.

Said several motions to dismiss filed herein are hereby referred to and made a part of this certificate of evidence.

316 Mr. Harding: And the motion to remand?

The Court: I have said at least a half dozen times that that motion to remand I would not hear. This order enjoining the parties in the first suit from prosecuting the second suit or going on with the second suit covers a motion to remand as plainly as it covers any other sort of a motion in the second case. Do you understand that proposition?

Mr. Harding: But who understands that in that record? If we take up the second case, the motion to remand is found there. There is no order made upon it and no order made in that case at all. Isn't it a very easy thing for your Honor to say that you have already overruled it, if—

The Court: My view of this situation is such that I don't think you have a right to be going on with these two suits at once, in the federal court and state court, or anywhere else.

Mr. Ammen: In order to prevent our being prejudiced ought not your Honor in this present order specifically to state, so that there can be no controversy, that it does enjoin our proceeding with the motion to remand.

The Court: If you desire it to specifically state that.

Mr. Ammen: We think that in order to protect us fully from our neglect or failure to push that motion—

Mr. Mayer: May it please your Honor—

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Mr. Ammen: Now, let us see the good faith of this defendant.

The Court: We don't get anything by this constant talk of good faith or bad faith. To the extent that there is any good faith just trust the Court to see.

Mr. Mayer: The order which you have just entered is in the first suit. The motion to remand which was long since overruled—

Mr. Ammen: It is in the second suit.

Mr. Mayer: Will your Honor kindly prevent the repetition of any such tactics.

This present order is in the first suit and should be entered as of December 13th. There is no motion to remand pending in the first suit; that has been overruled long
317 ago. The motion to remand in the second suit is here on file. You are not disposing of that motion, you are entering no order in the second suit.

The Court: I am entering an order in the first suit, that there shall not be even a motion to take up the motion to remand.

Mr. Harding: That is all right. I would only want your Honor to say so, otherwise Mr. Mayer will say there was no order.

Mr. Mayer: Well, I have been through practical experience with these gentlemen before, and you follow this case as it proceeds and see if I am right.

Mr. Ammen: All we want is to make sure that your Honor states in the order specifically what you hold.

The Court: I will do whatever Judge before whom it comes up the justice to assume that he will understand.

Mr. Harding: This order says nothing about the motion to remand.

Mr. Mayer: This present order is entered as of December 13th, Mr. Clerk.

The Court: December 13th.

And thereupon said respondents, severally, objected and excepted to the respective findings of the Court in the said order last above referred to, and to the entry of the said order, and the respective portions thereof, and the action of the Court in entering the same, or directing the entry thereof, and, particularly, to the action of the Court in directing the entry thereof to be made as of December 13, 1907.

And afterwards, namely, on Decemebr 27, 1907, again

came the said parties, by their attorneys aforesaid, and thereupon the following proceedings were had:

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Mr. Ammen: Your Honor, the clerk proposed to enter your order under the oral directions of the court as if it were actually entered of record on the 13th, not a nunc pro tunc order, and we found that it would cut off our appeal.

The Court: My attention was called to it.

318 Mr. Ammen: The petition for an allowance of time for the certificate of evidence was at a subsequent term and we thought, of course, it was not the intention of the court to cut off our chance to have the order reviewed.

The Court: Not at all.

Mr. Ammen: The certificate of evidence will, of course show the order of proceedings, when your Honor rendered your opinion, and whatever he decides and wishes to put in of that opinion; it will show order of the proceedings; it will show we presented our motion to dismiss.

The Court: Why not have the order entered as of December 13th, and an order of the same date giving you time.

Mr. Ammen: The statute requires us to perfect an appeal within thirty days.

The Court: Well, that given you thirteen days—there will be sixteen days yet.

(Here follows further argument by Mr. Mayer)

Mr. Ammen: We have now upon the record, as the clerk proposes to make it, an order of last term with an order of this term.

The Court: The clerk was directed by the court in open court to enter that order, as the Court ordered it entered.

Mr. Ammen: Wasn't that intended to be a nunc pro tunc order?

The Court: Not at all.

Mr. Ammen: Does your Honor think that by an oral direction to the clerk, that a clerk can enter an order as of a former term? Must not the court speak by its order?

The Court: At the time this matter was disposed of, the Court said to enter an order in a certain way as it then decided and when the order is prepared it is entered that way.

Mr. Ammen: Not nunc pro tunc.

The Court: Not at all.

Mr. Ammen: If that is true, would not our objections and exceptions and allowance of time for certificate of evidence,

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would not that necessarily have to be of the same term?

319 The Court: I don't know anything about that. I will have to examine the question every time it comes before me. I presume you have looked it up?

Mr. Ammen: I have.

The Court: What authority have you?

Mr. Ammen: I understand there is no conflict of authorities that a certificate of evidence must be presented during the term, or within the time which the court fixes during the same term to present it. The Court must extend the time, but it must be done at the same term.

Mr. Mayer: Now, why am I insistent that this judgment should appear as of December 13th? Your Honor knows why. Because it antedates the notices that they gave of motions—five motions to dismiss, and why do we ask December 13th? Because that was the date of your judgment. Your decision was rendered on December 13th and if we had had the time, or possibly your Honor's minute clerk would have made the minute of your order, and, therefore, it is not an order nunc pro tunc; it is an order as of the date on the day when your Honor rendered the judgment.

Counsel say the term has run. They cannot be cut off from their right of appeal, if the order is appealable. Upon that they will hear something in the Court of Appeals, not here. I am not contesting any motion that your Honor is going to allow. Upon appeal upon that subject we may be heard in the Court of Appeals. Now, the 20 days run from December 13th, the date of the order and if the 20 days is not enough, I have no objection to making it 25 or 30. I am not standing here on time, and all that is necessary is that at the foot of your decree, as though asked yesterday—is the certificate of evidence 20 days or 30 days?

The Court: 30 days from the 13th—

Mr. Mayer: To the 13th of January.

The Court—will give you practically 20 days from yesterday.

Mr. Mayer: And then if that time is not adequate let them come in in the interim.

Mr. Ammen: The clerk, though—the special occasion of our being here—the clerk, Mr. Joyner informed me that

320 the clerk would not add that 20 days from that date for the certificate of evidence.

The Court: Yes, of course. There had not been anything said about 20 days.

Mr. Ammen: Only the same oral direction by which he was told to enter the other. Certificate of evidence filed April 30, 1900

The Court: That is all right. The clerk when he refused to do that, he was all right, and he is a good clerk, because nothing was said on the 13th of December about a certificate of evidence.

Mr. Ammen: Now, I would like to have this record show your Honor, that we particularly object and except to dating this decree back to the 13th, unless it be done by a nunc pro tunc order, and then we will preserve an objection to that; and we say the Court has no power to do it by an oral direction to the clerk—that the Court must speak by its order, of record.

The Court: Yes. Your position would wipe out every order that has been entered in this court for 40 years; it would wipe out every judgment that has been entered in this court.

Mr. Ammen: I don't understand what your Honor means by that.

The Court: I mean, a judgment is entered today, but it is not written up for probably 6 weeks—

Mr. Ammen: That is not the question at all. I say that the opinion is not a judgment in this sense —

The Court: I thought there was no misunderstanding in anybody's mind from the language that I endeavored to use on the 13th of this month as to what the Court at that time found.

Mr. Ammen: My contention on that is that it should be a nunc pro tunc order. We don't want any question about our right to review this order.

The Court: You can't possibly be more anxious than this Court to have that order reviewed.

Mr. Ammen: I believe that.

The Court: Now, you can have your 30 days added to that order of the 13th of December, or 40 days, if you want it; and any objection that you desire to present, going to
321 the question of the propriety of the order being entered.

Mr. Ammen: We presented yesterday the copy of the order that we thought ought to be entered, on that point as to the time for a certificate of evidence.

Mr. Mayer: The difficulty is, counsel is not conversant with the method of perfecting an appeal in this court.

The Court: Now, what do you want added to this for your certificate of evidence?

Certificate of evidence, filed April 30, 1908.

Mr. Ammen: We want, whenever the decree is entered, we want this added: "and to this order and decree and every part thereof the said George F. Harding and A. B. Joyner, William J. Ammen and George F. Harding, Jr., jointly and severally denying and objecting to the jurisdiction of the said Court over them, object and except; and they, and each of them, are hereby granted days"—30 days, now—"from this date in which to present to this Court a certificate of evidence, or bill of exceptions, to be signed and filed and made a part of the record herein."

That was the language that we had in the order as drafted by us.

The Court: Can you cut that out and add it on here?

Mr. Ammen: Yes, sir. (Cuts out portion) Just one interlineation, with a pencil here, I will put it in with a pen.

Mr. Mayer: May I trouble your Honor to read that?

The Court: (Reading) "And to this order and decree and every part thereof the said George F. Harding and A. B. Joyner, jointly and severally denying and—"

Mr. Ammen: George F. Harding, Jr., and William J. Ammen should be in there, too.

The Court: "denying and objecting to the jurisdiction of the Court over them, object and except; and they and each of them are hereby granted 30 days from this date in which to present to this Court a certificate of evidence or bill of exceptions." Certificate of evidence. I don't want to write down that I am allowing time for a bill of exceptions in a chancery case.

322 Mr. Ammen: That is what I thought, and yet Rose's Federal Procedure calls it a bill of exceptions in all of these cases. Please put in, your Honor, George F. Harding, Jr., and William J. Ammen after those other two names where it mentions those other two.

The Court: Add that to the bottom of this order, Mr. Clerk.

The Clerk: Disregard that part of the order of yesterday?

The Court: Yes. Anything further in this matter?

Mr. Mayer: Nothing, your Honor.

323 The court further certifies, at the request of said George F. Harding, Sr. and William J. Ammen, solicitors, as aforesaid, that on December 25th, 1907, there was served upon said Levy Mayer a notice in words and figures as follows:

324 United States of America,
Northern District of Illinois,
Eastern Division. } ss.

Notice, served Dec. 25, 1907, upon Levy Mayer.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for the Northern District of Illinois,
Eastern Division Thereof.

George F. Harding, *Complainant,*
-*vs*-
Standard Oil Company, *et al. Defendants.* } In Chancery. No. 28865.

To Moran, Mayer & Meyer, James M. Sheean, Alfred D. Eddy, and Robert W. Stewart, Solicitors for Defendants in the above entitled cause:

You and each of you are hereby notified that on Thursday, December 26th, 1907, at 10 o'clock A. M., or as soon thereafter as Counsel can be heard, before his Honor, Judge Landis, in his Court room, I appearing especially for the purpose of moving to have said cause remanded to the Superior Court of Cook County, and for said purpose only, will present the motion to remand said cause as aforesaid, heretofore filed in said cause, and move to have said cause remanded to said Superior Court in accordance with said motion; at which time and place you can appear if you see fit.

GEORGE F. HARDING
Pro Se.

GEORGE F. HARDING
of Counsel.

Received copy of above notice,
this 25th day of December, A. D. 1907.

.....

.....

.....

325 The court further certifies that on December 26th, 1907, said George F. Harding, Sr. and William J. Ammen presented to this court a motion to remand said cause of George F. Harding v. Standard Oil Company, et al., referred to in the notice last aforesaid, and which motion was filed in said cause on December 23rd, 1907.

Said motion to remand is as follows:

Motion to remand cause, filed Dec. 23, 1907.

326 United States of America, Northern District of Illinois, Eastern Division. } ss.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division, thereof.

George F. Harding, *Complainant,*

vs.

Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, all corporations, etc., Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford, E. L. Wemple and W. C. Sherwood, *Defendants.* } In Chancery. No. 28865.

MOTION TO REMAND CAUSE TO THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS.

Now this day comes George F. Harding, complainant in the above entitled cause, and appearing specially for the purposes of this motion only, saving and reserving any and all objections which he has to the manifold imperfections in the mode, manner and method of the removal papers, and expressly denying that this Court has jurisdiction of said cause, or of said complainant herein, respectfully moves the Court to remand said cause to the Superior Court of Cook County, Illinois, from whence it was removed for the following reasons, namely.

1. That this cause does not present a controversy of a civil nature wholly between citizens of different states, nor

Motion to remand cause, filed Dec. 23, 1907.

does said suit present a separable controversy between
327 said complainant and said petitioner therein, and as improperly alleged in said petition and that no such controversy exists as therein alleged.

2. That said Superior Court of Cook County, Illinois, never was and is not authorized to surrender jurisdiction of said cause and that said Circuit Court of the United States never was and is not authorized or entitled to take jurisdiction of said cause.

3. Because it is not properly shown by said petition for removal or by the record, in said cause, in legal language and form as required in such pleading, that the parties to said cause were citizens of different states either at the time of the commencement of said suit or at the time of presenting said petition for removal to said Superior Court, or at the time of the filing of said petition therein.

4. Because it is not shown by the record herein, or by said petition, of what state or states said defendants, respectively, were residents of at the time of the commencement of said suit and at the time when said petition for removal was presented to said Superior Court, or filed therein.

5. Because the complainant in said cause was, at the time of the commencement of said suit and at the time of the presenting of said petition for removal therein to said Superior Court, and of the filing of the same therein, a citizen of the State of California, and a citizen of no other state, and at the times aforesaid was not a resident of the aforesaid district; and Charles L. Glass, Joy Morton, William J. Calhoun and H. G. Herget, defendants in said cause were, respectively, at the times aforesaid, citizens and residents of the said State of Illinois, and the other defendants, respectively, were not, at the times aforesaid, citizens of said State of Illinois, or residents of said district, but were, at said times, citizens of states other than said State of Illinois, and not residents, respectively, of said district.

6. Because said petition for removal fails to allege in manner and form as required by law, what is, or was, the alleged separable controversy between said complainant and the said petitioner in said cause, and because the said allegation therein that a separable controversy existed therein between said petitioner and said complainant were and are untrue.

328 7. And, because the Standard Oil Company, of New Jersey, one of the defendants in said cause, did not unite

Motion to remand cause, filed Dec. 23, 1907.

and join in said petition for removal and because of other imperfections, errors and insufficiencies in said petition for removal and proceedings thereunder and of other matters shown by the record in said cause.

8. Because said order of removal is unlawful and should be set aside, in that it improperly and unlawfully enjoins said complainant from prosecuting said suit in said Superior Court of Cook County.

Wherefor complainant respectfully moves that said cause be remanded to said Superior Court of Cook County, Illinois.

GEORGE F. HARDING
Complainant in said cause.

GEORGE F. HARDING,
of counsel.

(Endorsed) Filed Dec. 23, 1907, H. S. Stoddard, Clerk.

Affidavit of George F. Harding, Jr.

329 The said affidavit of the said George F. Harding, Jr., which the Court declined to receive or hear in support of said several motions to dismiss said suit, here follows, namely:

330 United States of America,
Northern District of Illinois,
Eastern Division. } ss.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.*
} In Equity. No. 28,695.

To the Honorable Kenesaw M. Landis, Judge of said Court, in Chancery Sitting:

The undersigned, George F. Harding, Jr., in behalf of the Plaintiff in the above entitled cause, and in support of the motion of said Plaintiff to dismiss its Bill of Complaint, respectfully represents and shows to your Honor, the following facts, viz:

That, he, said George F. Harding, Jr., was, at the time of

Affidavit of George F. Harding, Jr.

the beginning of this suit, and has ever since been, and still is, the President and Manager of the Chicago Real Estate Loan & Trust Company, the Plaintiff in this cause, and the Superintendent and Manager of its property and affairs, and, with its attorneys of record in this suit, has been and still is in charge of this suit, at the time of and ever since the time of the beginning thereof, in the State Court; that when said suit was begun it was by his direction, and upon due conference with and the advice of the attorneys of record in said cause, and in the utmost good faith upon the part of said Plaintiff, and upon the part of this affiant, and said attorneys, and with the firm belief that said Plaintiff had a good and honest case as stated in said bill, and would and should be successful therein; and that such suit was brought not only for the benefit of such Plaintiff, but with the belief if said Plaintiff was found to be a stockholder with the right to prosecute such suit, as was then firmly believed by said Plaintiff, and by this affiant, that, in such event, such decree would prove to be for the benefit and advantage of all stockholders of the said Corn Products Company affected by the conspiracy or misconduct alleged in said bill, and, also, for the benefit of all consumers of glucose, starch, and their by-products, in this country, and of all others suffering from the oppressive monopoly, established by the Standard Oil
331 Company of New Jersey, or by parties in its interest, controlling the defendants in this suit, acting as its agents for such purpose. That this suit was therefore to advance the ends aforesaid brought in the State Court, in the County, in or near which, the larger part of the 38 factories mentioned in the said bill are located, the said Plaintiff having thus invoked the aid and jurisdiction of the Courts of the State where the wrongs complained of in the said bill were done, or being done, as set forth therein, and such jurisdiction was invoked and preferred for that and other reasons upon the part of the said Plaintiff, and of this affiant.

That when certain defendants in this suit, acting, as this affiant is informed and believes, in the interest of the said Standard Oil Company, caused this suit to be removed to this Court, the Plaintiff herein, resisted such action, and moved to remand said suit to the State Court, believing that the allegation that a Federal question was involved was a mere colorable pretense, and that the mis-conduct charged in the bill was a violation of the Statutes of Illinois, and of the common law, as stated in said bill, and that to obtain the relief sought

Affidavit of George F. Harding, Jr.

there was no need of the aid of any Federal Statute; and that such removal of the case to this Court was wholly in the interest of the said Standard Oil Company; and that this was also true of the obtaining of the order of this Court restraining the further prosecution of this case in the State Court; and thereupon the Plaintiff herein, and this affiant, and said attorneys for this Plaintiff, were surprised by the fact that in this case, by one of the defendants, Joy Morton, acting by and through the common attorneys of said defendants, set up in and by his answer and cross-bill herein, that the Plaintiff herein falsely or wrongfully pretends to be the legal owner of stock as alleged in said bill, and further set up and claimed that said Plaintiff cannot own or hold any such stock, or maintain or prosecute this suit as such stockholder, and that such plaintiff, under the law, has no right as such stockholder, and that said defendants have been and are being unjustly prosecuted and injured by the bringing of this suit, and that the same cannot be maintained, and is in fact fraudulent;
332 and said cross-bill prays that said stock be cancelled, and declared void, as shown by such cross-bill, and that the plaintiff in this case shall be punished for bringing and prosecuting this case; and should pay the alleged damages that said Morton has suffered amounting as alleged to $10,000, or thereabouts, because of the bringing and prosecution of this case, as stated in such cross bill and answer of said Morton.

Said cross bill and answer of said Joy Morton were filed in this cause, in June, 1907, soon after this case had been begun in May, and the justice and propriety of said cross-bill and answer were and are vouched for by said Levy Mayer, and the other attorneys for said defendants, whose signatures are attached to the same; and this affiant is informed and believes that said cross-bill and answer were in truth filed by or for the said Standard Oil Company of New Jersey, with the object of defeating and delaying this suit, and obstructing the cause of justice, and preventing the hearing of this case upon its merits, and avoiding a decree against the parties maintaining said monopoly of the said necessaries of life, glucose, starch, and by-products, now enjoyed by the agency and in the name of its agents, the newly created corporations of New Jersey, defendants herein, and exacting from the American people wrongfully and unlawfully not less than $6,000,000 a year; and the jurisdiction of the courts of

this state was defeated by said order of removal, while said defendants are invoking, in this very suit, the aid of the laws of this state, denying to its corporations the right to hold such stock. Affidavit of George F. Harding, Jr.

This affiant further states that the plaintiff in this case finding itself in this situation, in September, 1907, instructed its attorney herein to dismiss this suit; and in pursuance of said instruction the plaintiff herein gave to said Morton, and the other defendants, who had appeared by their attorneys, Levy Mayer, and others, notice of its intention to dismiss this case, and of its motive to dismiss the same. That said first notice of said motion to dismiss was given to said attorneys on October 1, 1907, and was to the effect that said motion to dismiss would be presented to Judge Bethea of this Court, on October 1, 1907; that said 333 motion was presented to Judge Bethea in pursuance of said notice, but said Judge declined to hear said motion because engaged in other matters, or for other similar reasons assigned; that no order was entered in consequence thereof, but said motion to dismiss was then filed in this court on October 1, 1907, as shown by the record, herein, and is as follows, viz:

Motion, filed Oct. 1, 1907.

CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois—Eastern Division.

Chicago, Oct. 1, 1907.

Chicago Real Estate Loan & Trust Co. *vs.* Corn Products Co. *et al.* } Gen. No. 28695. Bill & Cross-Bill.

Motion of said complainant to dismiss bill of complaint without prejudice & without prejudice to right of cross complainant to prosecute his cross bill in said cause.

Order: No order.

WM. J. AMMEN,
Plaintiff's Attorney.
MORAN, MAYER & MEYER & JAMES M. SHEEAN,
Defendant's Attorneys.

(Endorsed) Filed Oct. 1, 1907, H. S. Stoddard, Clerk.

Affidavit of George F. Harding, Jr.

334 That a similar notice was then given on October 1, 1907, for the next day, or the same day, for a hearing of said motion to dismiss before His Honor, Judge Kohlsaat, who was then expected to hold Court, but said motion was not heard because said Judge was not holding Court as had been expected that such Court would be then held; and after appearing in said Court and finding the said Judge thereof absent, this affiant is informed and believes, that, by stipulation with said attorneys for said defendants, further notice in writing of said motion was waived, and it was agreed that oral notice by telephone would only be required when the attorney for the plaintiff herein could ascertain that the motion could be heard before His Honor, Judge Landis, or some other Judge of this Court. That it was uncertain when said motion could be heard and it was therefore postponed and has been ever since postponed.

That one of the reasons for delay in procuring a dismissal of this case or bringing on said motion to dismiss the same, for hearing, was due to the fact that subsequently it was found that said Judge Landis was absent upon a vacation, or was not holding Court, and the attorney for said Plaintiff was not advised and could not learn when His Honor, Judge Landis, would hold Court, and other and later opportunities for the hearing of said motion, upon the return of said Judge Landis, were necessarily postponed by the engagements of counsel elsewhere.

That, on October 19, 1907, a bill was filed by George F. Harding in the Superior Court of Cook County against the Standard Oil Company, and other defendants, asking similar relief, in part, and with similar allegations, in part, to those made in the bill in this case at bar, which said case is now transferred to this Court and touching which this Court is now fully advised. That the ensuing period has been occupied with the motions and hearings growing out of said case, including rules to show cause why affiant and others should not be attached for contempt, and why said attorney should not be attached for contempt, and during said motions

335 and hearings the attention of this Court had been called by all the parties to such hearing to said efforts to dismiss this case. That said Mayer, counsel for the defendants herein, has read and produced before this Court the said two notices served upon him, and others, of said motion to dismiss, and declared that the said motion to dismiss was on file. That

the said Mayer stated on such hearing that the object of said Morton, and other defendants, and said attorneys for them, was to defeat the dismissal of this case; and that the said defendants had rendered the dismissal of this suit impossible and intended to do this by said cross-bill, and that said cross-bill had the effect of defeating the intention of said plaintiff to dismiss this bill which he had suspected.

Affiant further states that these were the confessions, assertions and admissions openly and boastfully made before your Honor on behalf of said defendants by said Levy Mayer, their attorney, upon the hearing of the rules to show cause in this case on November 12th and 13th, 1907.

Your affiant further states that he is advised and believes that this suit cannot result in a valid and effective decree by a stockholder and cannot give jurisdiction of the subject matter of this suit in this Court as adjudged and determined by the law of this State as recently declared by its Supreme Court and it may well be that any order and any decree entered by this Court in pursuance of the contrary opinion or in disregard of the law as so declared will result in final defeat in this suit.

That it should be necessary, that such nefarious scheme pointed out upon the part of the Standard Oil in the case at bar delaying and defeating perhaps the righteous prosecution by the stockholders undertaken by this bill, should be defeated as it can only be by a dismissal of this case as your affiant is advised.

By reason of the facts and circumstances above stated this affiant has been advised by the attorney for the plaintiff herein to dismiss this suit and has directed the attorney for the plaintiff to move for such dismissal before Your Honor and respectfully asks for said dismissal in order to pre-
336 vent the entry of the proposed order in said case based upon the doctrine and opinion of Your Honor that this case can result in a valid and effective decree and stockholders should be compelled to come into this Court and into this case for relief.

(Signed) GEORGE F. HARDING, JR.,
President and Manager of said Chicago Real Estate Loan & Trust Company.

Affidavit of George F. Harding, Jr.

State of Illinois, }
County of Cook. } ss.

George F. Harding, Jr., being first duly sworn, states upon his oath, that he has read the foregoing statement of facts signed by him as the President and manager of said Chicago Real Estate Loan and Trust Company, and knows the contents thereof, and that the same, and the matters and things therein stated, are true, of his own knowledge, except as to the matters therein stated on information and belief, and, as to those matters, he believes the same to be true.

Dated this 26th day of December, 1907.

(Signed) GEORGE F. HARDING, JR.

Subscribed and sworn to before me this 26th day of December, A. D. 1907, by the above named George F. Harding, Jr.

ALICE WILLNER,
(Seal) *Notary Public in and for Cook County, Illinois.*

Copy of affidavit of George F. Harding, Jr.

337 The Court further certifies that on December 25th, 1907, said Chicago Real Estate Loan & Trust Company served upon Levy Mayer, solicitor of record for certain of the defendants, a paper to be used by said Chicago Real Estate Loan & Trust Company in support of said motions to dismiss said suit, and which paper purported to be a copy of said affidavit of said George F. Harding, Jr., and which paper is in words and figures as follows:

338 United States of America, }
Northern District of Illinois, } ss.
Eastern Division. }

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company, *vs.* Corn Products Company, *et al.* } In Equity. No. 28,695.

To the Honorable Kenesaw M. Landis, Judge of said Court, in Chancery Sitting:

The undersigned, George F. Harding, Jr., in behalf of the

Plaintiff in the above entitled cause, and in support of the motion of said Plaintiff to dismiss its Bill of Complaint, respectfully represents and shows to your Honor, the following facts, viz:

Copy of affidavit of George F. Harding, J.

That, he, said George F. Harding, Jr., was, at the time of the beginning of this suit, and has ever since been, and still is, the President and Manager of the Chicago Real Estate Loan & Trust Company, the Plaintiff in this cause, and the Superintendent and Manager of its property and affairs, and, with its attorneys of record in this suit, has been and still is in charge of this suit, at the time of and ever since the time of the beginning thereof, in the State Court; that when said suit was begun it was by his direction, and upon due conference with and the advice of the attorneys of record in said cause, and in the utmost good faith upon the part of said Plaintiff, and upon the part of this affiant, and said attorneys, and with the firm belief that said Plaintiff had a good and honest case as stated in said bill, and would and should be successful therein; and that such suit was brought not
339 only for the benefit of such Plaintiff, but that the decree therein, if said Plaintiff was found to be a stockholder with the right to prosecute such suit, as was then firmly believed by said Plaintiff, and this affiant that, in such event, such decree would prove to be for the benefit and advantage of all stockholders of the said Corn Products Company affected by the conspiracy or misconduct alleged in said bill, and, also, to all consumers of glucose, starch, and their by-products, in this country, and all others suffering from the oppressive monopoly, established by the Standard Oil Company of New Jersey, or by parties in its interest, controlling the defendants in this suit, acting as its agents for such purpose, this suit having been brought in the State Court, in the County, in or near which, the larger part of the 38 factories mentioned in the said bill are located, the said Plaintiff having thus invoked the aid and jurisdiction of the Courts of the State where the wrongs complained of in the said bill were done, or being done, as set forth therein, such jurisdiction being invoked and preferred for that and other reasons upon the part of the said Plaintiff, and this affiant.

That when certain defendants in this suit, acting, as this affiant is informed and believes, in the interest of the said Standard Oil Company, caused this suit to be removed to this Court, the Plaintiff herein, resisted such action, and moved to remand said suit to the State Court, believing that the alle-

Copy of affidavit of George F. Harding, Jr.

gation that a Federal question was involved was a mere colorable pretense, and that the mis-conduct charged in the bill was a violation of the law of the Statutes of Illinois, and of the common law, as stated in said bill, and that to obtain the relief sought there was no need of the aid of any Fed-
340 eral Statute, and that such removal of the case to this Court was wholly in the interest of the said Standard Oil Company, and that this was also true of the obtaining of the order in this Court restraining the further prosecution of this case in the State Court; and thereupon the Plaintiff herein, and this affiant, and said attorneys for this plaintiff were surprised by the fact that in this case, by one of the defendants, Joy Morton, acting by and through the common attorneys of said defendants, set up in and by his answer and cross-bill herein, that the Plaintiff herein falsely or wrongfully pretends to be the legal owner of stock as alleged in said bill, and further set up and claimed that said Plaintiff cannot own or hold any such stock, or maintain or prosecute this suit as such stockholder, and that such Plaintiff, under the law, has no rights whatever as such stockholder, and that said defendants have been and are being unjustly prosecuted and injured by the bringing of this suit, and that the same cannot be maintained, and is in fact fraudulent, and said cross-bill prays that said stock be cancelled, and declared void, as shown by such cross-bill, and that the plaintiff in this case shall be punished for bringing and prosecuting this case, and should pay the alleged damage that said Morton has suffered amounting as alleged to $10,000, or thereabouts, because of the bringing and prosecution of this case, as stated in said cross-bill and answer of said Morton.

Said cross-bill and answer of said Joy Morton were filed in this cause, in June, 1907, pust after this case had been begun in May, and the justice and propriety of said cross-bill and answer were and are vouched for by said Levy Mayer, and the other attorneys for said defendants whose signatures are attached to the same; and this affiant is informed
341 and believes that said cross-bill and answer were in truth filed by or for the said Standard Oil Company of New Jersey, with the object of defeating and delaying this suit, and obstructing the cause of justice and preventing the hearing of this case upon its merits, and avoiding a decree against the parties maintaining said monopoly of the said necessaries of life, glucose, starch, and by-products, now enjoyed by the agency and in the name of its agents, the newly

created corporations of New Jersey, defendants herein, and exacting from the American people wrongfully and unlawfully not less than $6,000,000 a year; and the jurisdiction of the courts of this state was defeated by said order of removal, while said defendants are invoking, in this very suit, the aid of the laws of this state, denying to its corporations the right to hold such stock. Copy of affidavit of George F. Harding, Jr.

This affiant further states that the plaintiff in this case finding itself in this situation, in September, 1907, instructed its attorney herein to dismiss this suit, and in pursuance of said instruction the plaintiff herein gave to said Morton, and the other defendants, who had appeared by their attorneys, Levy Mayer, and others, notice of its intention to dismiss this case, and of its motion to dismiss the same. That said first notice of said motion to dismiss was given to said attorneys on October 1, 1907, and was to the effect that said motion to dismiss would be presented to Judge Bethea of this Court on October 1, 1907; that said motion was presented to Judge Bethea in pursuance of said notice, but said Judge declined to hear said motion because engaged in other matters, or for other similar reasons assigned; that no order was entered in consequence thereof but said motion to dismiss was then filed in this court on October 1, 1907, as shown by the record herein.

342 That a similar notice was then given on October 1, 1907, for the next day or the same day for a hearing of said motion before His Honor, Judge Kohlsaat, who was then expected to hold Court, but said motion was not heard because said Judge was not holding Court as had been expected that such Court would be then held; and after appearing in said Court and finding the said Judge thereof absent, this affiant is informed and believes, that by stipulation with said attorneys for said defendants further notice in writng of said motion was waived, and it was agreed that oral notice by telephone would only be required when the attorney for the plaintiff herein could ascertain that the motion could be heard before His Honor, Judge Landis or some other Judge of this court. That it was uncertain when said motion could be heard and it was therefore postponed and has been ever since postponed.

That one of the reasons for delay, in procuring a dismissal of this case or bringing on said motion to dismiss the same, for hearing, was due to the fact that subsequently it was found that said Judge Landis was absent upon a vacation, or was not holding Court, and the attorney for said plaintiff was

Copy of affidavit of George F. Harding, Jr.

not advised and could not learn when His Honor, Judge Landis would hold Court, and other and later opportunities for the hearing of said motion, upon the return of said Judge Landis, were necessarily postponed by the engagements of counsel elsewhere.

That, on October 19, 1907, a bill was filed by George F. Harding in the Superior Court of Cook County against the Standard Oil Company, and other defendants, asking similar relief, in part, and with similar allegations, in part, to those made in the bill in this case at bar, which said case is now transferred to this Court and touching which this Court is now fully advised. That the ensuing period has been occupied with the motions and hearings growing out of said cases,
343 including rules to show cause why affiant and others should not be attached for contempt, and why said attorney should not be attached for contempt, and during said motions and hearings the attention of this Court had been called by all the parties to such hearing, to said efforts to dismiss this case. That said Mayer, counsel for the defendants herein, has read and produced before this court the said two notices served upon him, and others, of said motion to dismiss, and declared that the said motion to dismiss was on file. That the said Mayer stated on such hearing that the object of said Morton, and other defendants, and said attorneys for them was to defeat the dismissal of this case; and that the said defendants, by their attorneys, had rendered the dismissal of this suit impossible, and that the filing of the said cross-bill herein was intended by them to prevent the dismissal of this suit, on the motion of the Plaintiff herein, and has had that effect, this having occurred before your Honor upon the hearing of the motion of the said Levy Mayer, and his associates, to compel the dismissal of the said second suit, upon the hearing of which motion, said Mayer has repeatedly demanded, that this affiant, and the attorneys for the plaintiff in this suit, should be punished for contempt, as shown by the record in this suit, and the proceedings recently had before your Honor, it being a part of the schemes of the said Standard Oil Company, and others, defendants in this suit, confessed and boasted of on such hearing, to stop further prosecution against them, by reason of the fact, as claimed by said defendants, that this present suit is and will remain wholly inefficient and ineffective and cannot result in a decree in favor of the Plaintiff herein, for the reason

Copy of affidavit of George F. Harding, Jr.

that, such Plaintiff in this suit has no right to prosecute
344 this suit as a holder of stock of said Corn Products Company, and yet, this suit, which, it is claimed, as above shown, cannot result in a decree in favor of the Plaintiff herein, is used as the basis of or for an order of this court, denying, on the one hand, the right of this Plaintiff to dismiss this suit, and, on the other hand, enjoining the further prosecution of the said Standard Oil Company, and others, as contemplated by the order of this Court now about to be entered in this cause.

By reasons of the facts and circumstances above stated, and, particularly, by reason of the said objection raised in this suit as to the capacity of said Chicago Real Estate Loan & Trust Company, to hold or own stock in said Corn Products Company, and obtain relief in this suit as such stockholder, which objection this affiant has been advised by the attorney for the Plaintiff herein, may prove to be well founded, under the laws of Illinois—for these reasons, and others, the Plaintiff herein desires to dismiss this suit, and has directed its attorney herein to move for such dismissal before your Honor.

. . . . . .

President and Manager of said Chicago Real Estate Loan & Trust Company.

345 State of Illinois }
County of Cook. } ss.

George F. Harding, Jr., being first duly sworn, states upon his oath, that he has read the foregoing statement of facts signed by him as the President and Manager of said Chicago Real Estate Loan and Trust Company, and knows the contents thereof, and that the same, and the matters and things therein stated, are true, of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, he believes the same to be true.

Dated this 26th day of December, 1907.

. . . . . .

Subscribed and sworn to before me this 26th day of December, A. D. 1907, by the above named George F. Harding, Jr.

. . . . . .

Notary Public in and for Cook County, Illinois.

346 To the insertion of said paper in this certificate of evidence said plaintiff objects and excepts; and the court further certifies that said paper was not offered in evi-

dence nor considered by the court in disposing of said motions to dismiss.

347 The court further certifies, at the request of Levy Mayer, the solicitor of certain of the defendants of record, that on December 30th, 1907, the said William J. Ammen, as solicitor for complainant, served upon Moran, Mayer & Meyer (of which firm Levy Mayer is a member) and James M. Sheean a notice accompanied by an amended bill, which notice and amended bill are in words and figures as follows:

Notice, served on Moran, Mayer & Meyer and James M. Sheean.

348 United States of America,
Northern District of Illinois, } ss.
Eastern Division thereof.

IN THE CIRCUIT COURT OF THE UNITED STATES,

in and for the Northern District of Illinois,

Eastern Division.

Chicago Real Estate Loan & Trust Company,
Complainant,
vs.
Corn Products Company, *et al.*
Defendants.
} Bill 28695.

To Moran, Mayer & Meyer and James M. Sheean, Solicitors for Defendants in the above entitled cause:

You and each of you are hereby notified that on Tuesday, December 31, 1907, at 10 o'clock, A. M., or as soon thereafter as counsel can be heard, I shall before His Honor, Judge Landis, in his court-room, ask leave to file an Amended Bill of Complaint in said cause, instanter, a copy of which said Amended Bill is herewith delivered to you; and at the same time and place I shall call up for hearing and disposition the demurrer of the complainant herein to the cross-bill of Joy Morton, filed in said cause. At which time and place you can appear if you see fit.

Dated this 30th day of December, A. D. 1907.

WM. J. AMMEN
Solicitor for Complainant.

Received a copy of the above notice, and of the amended bill of complaint therein referred to this 30th day of December, A. D. 1907.

.....
.....

Copy.

Amended bill of complaint.

249 No. 26895.

United States of America,
Northern District of Illinois,
Eastern Division thereof.

IN THE CIRCUIT COURT OF THE UNITED STATES
In and for the Northern District of Illinois,
Eastern Division.
December Term, A. D. 1907.

Chicago Real Estate Loan & Trust Company,
Complainant,
vs.
Corn Products Company, *et al.*
Defendants.
In Chancery.

AMENDED BILL OF COMPLAINT.

350 United States of America,
Northern District of Illinois,
Eastern Division thereof.
ss.

IN THE CIRCUIT COURT OF THE UNITED STATES
in and for the Northern District of Illinois,
Eastern Division.
December Term, A. D. 1907.

Chicago Real Estate Loan & Trust Company,
Complainant,
vs.
Corn Products Company, *et al.*
Defendants.
In Chancery.
No. 28695.

Amended Bill of Complaint.

To The Judges of the said Circuit Court in Chancery Sitting:
Your orator, the Chicago Real Estate Loan & Trust Company, a corporation, duly organized and existing under the

Amended bill of complaint.

laws of the State of Illinois, a resident and citizen of the State of Illinois, humbly complaining, respectfully represents unto your Honors: That your Orator on or before the year 1903 was the owner of 1000 shares of the capital stock of the Corn Products Company of New Jersey and ever since has been and still is the owner and holder of the same and that the value of said stock exceeded one hundred thousand dollars.

1. That the Standard Oil Company of New Jersey, and the defendants hereinafter named, constituting and controlling the Directory of the said Corn Products Company then and ever since have occupied the position of Trustees of your
350a Orator, as to said stock, and while acting as such Trustees they have wrongfully impaired and injured the value of all of said stock and are now further injuring and impairing the same by the conspiracy and misconduct hereinafter set out in this bill.

That said Standard Oil Company, and co-defendants, have wrongfully obtained possession by said conspiracy and misconduct of all the property of the Corn Products Company, including thirty-five and one-half factories engaged in the manufacture of glucose, starch and by-products, and that by a combination in the year 1906 the said defendants having also acquired the stock of two and one-half companies and of their factories engaged in the same buisness, have, while ruining the value of your Orator's stock, created a monopoly in the manufacture and sale of said necessaries of life, contrary to the interests and policy, and to the great injury of the people of the United States; and thereby now control more than 90% of the manufacture of the same, and have advanced the price of the same more than 100%.

1 1-2. Your Orator further shows unto your Honors, that it was incorporated on February 11, 1857, by an act then duly enacted by the Legislature of the State of Illinois, a copy of which marked Exhibit "A" is hereto attached, and your Orator prays that the same may be taken and regarded as a part of this bill.

That your Orator was duly organized under the provisions of said act and on and ever since its enactment and organization has been authorized and empowered to do and perform the several acts set out in said Statute; and was thereby specially authorized to buy and sell stock and other personal and real property; and your Orator shows unto your Honors

Amended bill of complaint.

that this right and power to hold the stock of other cor-
551 porations has been expressly adjudicated, determined and recognized by the Supreme Court of Illinois (volume 182, page 551 of the Reports of the Supreme Court of Illinois) in the case of your Orator and George F. Harding, complainants, against the said defendants, the Corn Products Manufacturing Company then known as the Glucose Sugar Refining Company, and others.

That the name of your Orator was originally known, and it was incorporated as the Peoria Starch Manufacturing Company, but its name was changed in 1894 to that of the Chicago Real Estate Loan & Trust Company.

That under and by virtue of its said Charter your Orator was engaged in Peoria, Illinois, in the manufacture from corn, of starch, glucose an by-products for nearly thirty years.

That your Orator acquired said stock in the Corn Products Company in payment of a debt and obligation due to your Orator, and necessarily incurred in the due course of its business, as such corporation, and as authorized by its Charter, and originating and growing out of its business of manufacturing aforesaid.

2. That the Corn Products Company was and is a corporation organized under the laws of the State of New Jersey on February 28, 1902, with a capital stock of $80,000,000, divided into preferred stock of $30,000,000 and common stock of $50,000,000; and the stock of your Orator of 1000 shares consisted and consists of 450 shares of said preferred and 550 shares of said common stock, in shares of $100 each.

552 3. That when your Orator acquired the said stock, and for a considerable period theretofore, and for some time thereafter, the said Corn Products Company was the owner of said thirty-five large and valuable factories and plants aforesaid, and of the stock of the companies owning and operating the same in the States of Illinois, Indiana, Ohio, Iowa, and elsewhere, and also owned 49% of the stock of the New York Glucose Company of New Jersey with its factory in Edgewater, New Jersey, and that their said business of manufacture was then and theretofore and thereafter during the life of said companiy yielding large profits; that said factories had cost and continued to be worth up to the time of said conspiracy and misconduct hereinafter stated in this bill, more than $50,000,000; that the price of said stock of said Corn Products Company on the New York Stock Exchange

Amended bill of complaint.

at the formation of said company in February 1902 amounted to a total of $44,413,019; that the net earnings of only six of said companies (while owned by the said defendant, the Corn Products Manufacturing Company) from August, 1897, to February 28, 1902, exceeded $11,500,000; that the net earnings of said thirty-five and one-half factories for the ensuing period from February 28, 1902, to February 28, 1906, were $15,355,140 as stated by defendants (assuming only for the last year for which no statement has ever been published, that the earnings equaled that of the prior year).

That during the respective periods aforesaid, from August, 1897, to February 28, 1902, out of the proceeds of the six factories, the Corn Products Manufacturing Company earned as stated and paid dividends to the amount of $6,765,356; and out of the proceeds of the thirty-five factories, the Corn Products Company earned as stated and paid in dividends $6,942,040; and there was expended out of said earnings over $6,000,000 in repairing, rebuilding, and modernizing, and keeping said factories in the best condition; and that said defendants had as stated by themselves, during their whole career, a large surplus of several million dollars, and up to January 6, 1906, and on February 28, 1906, the Corn Products Company had a working capital of over $3,000,000 in addition to said surplus and did not owe a single dollar of indebtedness, bonded or otherwise.

That the Corn Products Company up to 1906, and up to the conspiracy hereinafter described, was during its whole career a most prosperous company; its factories were in the best condition; its greatest and most important plant in Chicago had just been rebuilt, remodeled, and modernized, and equipped for a large production, at the cost of $2,000,000. That the company must have shown much larger earnings and amply sufficient to pay dividends upon its preferred and common stock both, had it not gradually fallen into the cotnrol of the said Standard Oil Company, which company caused it to expend its money upon extensive improvements of its factories and also more than $1,100,000 upon the payment of debts which were in large part the debts of the Standard Oil Company itself; and the Standard Oil Company caused it to stop the payment of dividends in 1905 although this company was then amply able to pay the same, but this suspension served to advance the interests of said Standard Oil Company, as the sequel shows.

53 That the outlook for increased prosperity in the manufacture of glucose and by-products in January, 1906, had signally improved. That the margin of profit in such manufacture was the greatest ever known in its history; for the price of glucose and starch depending chiefly upon the market price of corn, its raw material, and said corn having been 5 cents per bushel on July 1, 1905, had thereafter steadily fallen so that on January 1, 1906, it was worth but 43 cents per bushel; and still rapidly fell in price so that the market price of corn on March 1, 1906, was less than 38 cents per bushel; and the cost at which starch and glucose could be manufactured was as low as it had ever been in the history of this company. Amended bill of complaint.

4. Your Orator further shows unto your Honors, that this successful condition of the Corn Products Co. at the period in question, when it was about to be destroyed, and the profitable character of its factories, are still further exemplified and proved by the sequel and expenditure of the succeeding years; for the earnings, chiefly from the operation of said factories for the year 1906, were over $6,000,000; and the earnings for 1907 have been at the rate of $600,000 per month and are increasing, and this too, also appears by the annual and quarterly statements of the defendants for those periods, and your Orator alleges that nothing had occurred in the history of the Corn Products Company up to January 6, 1906, to impair the solid value and the excellent condition of said company.

That the real value of said stock of your Orator would have continued and ought now to be, at the time of filing this bill, the full sum of the par of said shares, and cumulative dividends and interest upon said preferred stock at 7% annually, and also yearly dividends upon said common stock when and as earned out of the profits aforesaid, and which were adequate to the payment of the same from time to time yearly at 4%, had it not been for the misconduct, and the conspiracy, and the illegal acts of the said defendants against your Orator hereinafter described.

5. That prior to the 6th day of January, 1906, the exact date being unknown to your Orator, Conrad H. Matthiessen Norman B. Ream, William W. Heaton, Joy Morton, Charles L. Glass, William J. Calhoun, T. B. Wagner, H. G. Herget, E. F. Wemple, Benjamin Graham, W. H. Nichols, and Edward T. Bedford, were and for a long time had been the Officers and Directors of said Corn Products Company, and were the owners

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and holders of a large part of the stock, chiefly of the Common stock, of said Corn Products Company; that combining and confederating together, and with the Standard Oil Company of New Jersey, and others in the interest of said Standard Oil Company, which had for a long time named said Board of Directors and said officers, entered into an unlawful conspiracy to cheat and defraud your Orator, as the holder of the stock aforesaid, and all other holders and owners of the stock of the Corn Products Company not parties to said conspiracy, and undertook wrongfully to transfer the entire assets and business to a new corporation, the Corn Products Refining Company of New Jersey, to be organized and managed by the Standard Oil Company, and under and in pursuance of the following so-called Plan, which was afterwards wrongfully and unjustly carried into partial execution
354 to the great wrong and injury of your Orator as hereinafter set forth in this bill and to the extent hereinafter set forth.

PLAN.

6. "The Corn Products Refining Company will be organized under the laws of New Jersey with a capital of $30,000,000 Preferred and $50,000,000 Common Stock, the same as the Corn Products Company and with the same provisions as to preference.

Mr. E. T. Bedford will take the Presidency of the company and the management of its business, bringing into the Board of Directors those associates who have been actively connected with him in the New York Glucose Company.

When the plan becomes effective the Corn Products Refining Company will own: (1) At least a majority of the capital stock of the Corn Products Company; (2) the entire capital stock of the New York Glucose Company, not already acquired by the Corn Products Company; (3) the entire capital stock of the Warner Sugar Refining Company; (4) the entire capital stock of the St. Louis Syrup & Preserving Company and the new company, with its subsidiary companies will have a net working capital of approximately $5,000,000.

All stock set apart for exchange for stock of the Corn Products Company and not used for that purpose will remain in the treasury.

In effect, the Corn Products stockholders will surrender one-third of their holdings for the purpose of acquiring the

entire interest in the three companies above named, not already owned by the Corn Products company. Plan.

Those three companies have modern works, and no bonded debt except $2,300,000, while the subsidiary companies of the Corn Products Company, have a total bonded debt of $7,293,000.

The three companies, New York Glucose Company, Warner Sugar Refining Company and St. Louis Syrup & Preserving Company, contribute a net working capital of about $2,000,000 toward the joint working capital of $5,000,000.

During the year just ended those three companies did about 50% of the entire business, domestic and export.

The financial status of all companies to be verified by public accountants and titles to be examined by counsel.

. . . . . .

The undersigned stockholders among others have agreed to deposit stock under the foregoing plan.

C. H. MATTHIESSEN,
NORMAN B. REAM,
WILLIAM W. HEATON,
JOY MORTON,
J. B. GREENHUT,

7. Your orator alleges that the printed plan aforesaid was sent, as your Orator is informed and believes, to some of the stockholders of The Corn Products Company at some date unknown to your Orator, but believed to be in the year 1906, and was accompanied by a paper, of which the following is a copy, viz.:

355 "Title Guarantee and Trust Company,
146 Broadway.
New York, Jan. 6, 1906.

To the Stockholders of The Corn Products Company:

In accordance with the annexed Plan, The Title Guarantee and Trust Company is prepared to receive your stock on deposit and to issue transferrable certificates of deposit therefor, exchangeable for stock of The Corn Products Refining Company, on the basis of three shares of your stock, Common or Preferred, for two shares of the same class of the stock of The Corn Products Refining Company.

Scrip will be issued for fractions of shares, exchangeable for full shares in sums of one hundred dollars or multiples thereof.

The right is reserved to declare the Plan inoperative, in which event all stock deposited will be returned without cost

Plan.

to depositor, upon surrender of the certificates of deposit issued therefor, suitably endorsed, on or after March 31, 1906.

The time to deposit stock under the Plan will expire February 1, 1906, at 3 p. m.

The Certificates must be accompanied by power of its transfer in blank, the execution of which must be witnessed or guaranteed by someone known to this Company, or acknowledged before a Notary Public, under his official seal.

C. H. KELSEY,
President.

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8. Your Orator alleges and charges that the essence and effect of this Plan was the enforced liquidation of the Corn Products Company.

That this liquidation was to be accomplished under color and by means of a bargain for the benefit of the Standard Oil Company, and all of said schemes, divisions, and details of said Plan were in effect, merely, for the purpose, on the part of the Standard Oil Company and the parties in its interest, to give to said Standard Oil Company the monopoly of the glucose, starch, and by-products manufactured in the United States as already stated.

That the object of the Standard Oil Company was more easily accomplished by special contracts in advance with the said conspirators by which they were enabled to sell their stock on better terms than stated in said Plan; but there was reserved for your Orator and other stockholders the necessity of uniting in said Plan and consenting to said bargain, with no other alternative, as the Standard Oil Company had assured itself of the entire market for said Corn Products stock; and, if it could be sold at all, it must either be sold on the terms of this Plan or at private sale to the said Standard Oil Company, as elsewhere more fully shown in this bill.

9. Your Orator shows to your Honors that said Plan provided for the formation of the Corn Products Refining Company, capitalized at $80,000,000, and divided said stock between the holders of the $80,000,000 stock of the Corn Products Company so far as issued ($72,500,000), on the basis of two shares of the new company for three of the old, giving 60% of the stock of the new company to the stockholders of the Corn Products Company who should accept these terms.

That this division left the remaining 40% of said
356 stock of said company to the holders of the capital stock of the Warner Sugar Refining Company and of the capital stock of the St. Louis Sirup and Preserving Company,

and of 51% of the capital stock of the New York Glucose Company. Amended bill of complaint.

That as stated in said Plan: "in effect the Corn Products shareholders will surrender one-third of their holdings for the purpose of acquiring the entire interest in the three companies (last) above named, not already owned by the Corn Products Company."

That said 40% given to the holders of said two and a half factories had then a total value on the New York Stock Exchange of $16,854,569.

10. That the actual value of the said stock of said two and a half companies and their factories did not exceed three million dollars ($3,000,000). That they were then owned by the Standard Oil Company which had then bought the same for less than said sum. That the said 51% of the stock of the New York Glucose Company was absolutely worthless as it had nothing to represent it in value except its factory at Edgewater, New Jersey, that could not be economically used for the manufacture for which it was built; and this is now admitted by said defendant in their first annual statement. That said two and a half companies were capitalized at less than $5,500,000 and were subject to an indebtedness, bonded and floating, of $3,250,000 dollars; that they never had reported dividends or net earnings during their existence, of from five to ten years, and that they had no right to declare such dividends, and had no net earnings, is sufficiently explained by said indebtedness approximating the amount of their capital. That the statements of said three companies of January and February, 1906, evidently prepared for the purpose of justifying this division at the time show that at the highest estimate they were then worth less than $8,200,000.

That the gross earnings by the Warner and St. Louis factories for the only year for which comparison can be made, due to the suppression by said Trustee of the statement of the Corn Products Company for the year, as reported in 1905, give gross earnings, Warner, $83,417, St. Louis, $111,932, total, $195,349.

The gross earnings of the thirty-five companies of the Corn Products Company for the same period were $2,968,312; (omitting as a negligible quantity the gross earnings of the New York Glucose Company, being the half factory in each case). These gross earnings of the said two companies show that they the said owners should have been given upon the basis of their gross earnings 6% of the stock of the Corn

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Products Refining Company, instead of what this plan gave, viz.: 40%, and the management and control thrown in, and assured by the terms of the charter for many years to come.

So far as known said two factories had neither trade marks, patents, good will, nor any fruits to show of successful experience, were loaded with debt, nearly to the amount of their capital, and were burdened with infirmities of their own as to water supply and location.

11. That said Plan and Division gave to said Standard Oil Company, the holders of the said stock of the two and 357 a half companies and their factories, a profit of $15,000,000 outright. That said Division and Plan further provides for the permanent ownership and monopoly in the provision, namely: "Mr. E. T. Bedford will take the presidency of the company and the management of its business, bringing into the Board of Directors those associates who have been actively connected with him in the New York Glucose Company." That said Bedford, and his associates, of the New York Glucose Company, were simply Directors and Officers and Agents of the Standard Oil Company, and said Bedford and others of said associates were also openly Trustees of your Orator and the stockholders of said Corn Products Company, so that this Plan was simply a gift and bargain by which our Directors and Trustees sold said $80,000,000 of Corn Products stock to themselves.

12. That by this Plan, according to the valuation given the 40% of the stock of the Corn Products Refining Company, (which was paid for by said two and a half factories worth $8,200,000, at the very highest price named by themselves) then the 60% of the capital which remained was to be treated as only worth $12,000,000; and this proportionate sum of $12,000,000 was a fair and adequate division according to the equity of said Plan as administered by our Trustees to the holders of the $80,000,000 of Corn Products stock; and this was so just a Division and Plan, that it was certified to by the remaining Trustees and leading stockholders, who agreed to it in advance as shown by the following statement annexed to said Plan, namely:

"The undersigned stockholders, among others, have agreed to deposit stock under the foregoing Plan.

C. H. Matthiessen,
Norman B. Ream,
William W. Heaton,
Joy Morton,
J. B. Greenhut."

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That this was a certificate by a part of our Trustees and a part of the Directors of the Corn Products Company to their cestuis que trust, that it was a fair division, and an honest Plan, namely: That they should give up a third of their capital and surrender their right to the conduct of their own business to the Standard Oil Company, that they should besides pay $17,000,000 for two and a half factories one of them worthless, and the other two picked up by the Standard Oil Company at less than $2,000,000, and all incumbered for more than their value—that this fixing a valuation of $12,000,000 for the $80,000,000 capital of the Corn Products stock (in proportion to said $8,000,000 valuation of the said two and a half factories) was a fair one and should have the consent of every stockholder—urging that all their fellow stockholders should hasten to accept these terms (for their 35½ factories, for their trade secrets, good will, long experience, market and independence, and control of their own affairs, always successful, and about to be more prosperous than ever,) giving three shares of their stock, for two shares of stock in the Corn Products Refining Company, which stock at its highest value, proved worth in the market of 1906, less than $27,000,000, an immediate loss of $20,000,000—which
358 has now become $30,000,000, as elsewhere shown in the bill.

13. Your Orator further shows unto your Honors, that while it may not be further necessary to show that this Plan is most inequitable—that our trustees and the Standard Oil Co. should have given themselves the benefit of a bargain, both sides of which they made themselves, yet it may be wise to show what was the actual character and value of the assets represented by the $80,000,000 Corn Products Stock, sacrificed by this plan; and your orator therefore alleges the following facts, namely:

That in January, 1906, the Corn Products Company owned stock of thirty-five and one-half companies and their factories as follows:

I.

Six factories formerly owned and operated by the Glucose Sugar Refining Company of New Jersey.

(1.) The Chicago Sugar Refinery, which had actually cost, and was worth more than $8,000,000, with its valuable site

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on Taylor street and Chicago River, which, was, and is worth, site alone $3,000,000;

The legal description of the said property now held and operated in the name of the said Corn Products Manufacturing Company, in the City of Chicago, in the County of Cook, in the State of Illinois, as above shown, is as follows, namely: Blocks Seventy-five (75) and Seventy-eight (78) (except Taylor street) in School Addition to Chicago, in Section Sixteen (16), Township, Thirty-nine (39) North, Range Fourteen (14) East of the Third Principal Meridian, in the City and County and State aforesaid.

(2.) The factory of the American Glucose Company of Peoria, Illinois, then equal in value as a factory to that of Chicago; and both factories were unrivaled in capacity and excellence of products.

(3.) The factory of the Davenport Sugar Refining Company, of Davenport, Iowa, very favorably situated, for the manufacture of Glucose, sirup and by-products, and of great value, exceeding $2,000,000.

(4.) The factory of the Peoria Grape Sugar Company in Peoria, Illinois.

(5.) The factory of the Rockford Sugar Works, of Rockford, Illinois.

(6.) The factory of the Firminish Manufacturing Company, of Marshalltown, Iowa. That the said last three factories had cost more than $1,500,000 each and had a grinding capacity of 30,000 bushels daily.

14. That all of said six factories, with a working capital of $1,500,000 had belonged to the Glucose Sugar Refining Company, incorporated August 7, 1897, with a capital stock of $14,000,000, 7% cumulative Preferred, and $26,000,000 Common stock; that the Corn Products Company was organized on February 28, 1902, and then acquired nearly all the capital stock of the said Glucose Sugar Refining Company, in exchange for shares of the Corn Products Company, paying for said capital stock to the extent of $13,000,000 of the Glucose Preferred stock and of Twenty-one millions and a qurter of Glucose Common stock, by $16,081,750 of Corn Products Preferred stock, and $26,600,000 of Corn Products Common stock, holding in reserve $1,000,000 of Corn Prod-
359 ucts Preferred, and $3,500,000 of Common to acquire outstanding Glucose shares, nearly all of which were later exchanged for the said Corn Products Company's stock; the Corn Products Company paying in said exchange One and

a quarter shares of their stock for each share of Glucose Sugar stock; in short paying fifty millions of the capital stock of the Corn Products Company for $40,000,000 of the capital stock of said Glucose Sugar Refining Company. Amended bill of complaint.

15. The Glucose Sugar Refining Company owning only six factories and surplus and working capital, had no bonded debt, and had earned and paid dividends to the amount of $6,763,000 from the earnings of said six factories, (7% upon the Preferred ever since said company was organized in August, 1897, and 6% on the Common, commencing December 1, 1898, up to December, 1901, when the yearly rate was reduced to 4%); that until these six factories became the property of the Corn Products Company in February, 1902, the Glucose Sugar Refining Company expended $2,152,000 upon said factories, and the average net earnings of the same for the three prior fiscal years were annually $2,969,624, or 8% on the total capitalization of $40,000,000; and these are the facts as given in the annual statements of the said defendant, said Glucose Sugar Refining Company, now known as the Corn Products Manufacturing Company. That the value of the said six factories with said million and a half of working capital, and a surplus of $2,632,985, was then equal to the value of the stock of the Corn Products Company as given in exchange on February 28, 1902; and that value at the time of said exchange was 95c on the dollar for the Preferred and 38⅜c on the dollar for the Common stock upon the New York Stock Exchange; and said Glucose Sugar Refining Company was not only enjoying a highly prosperous business, but was in all respects in a very strong condition.

That the total actual value in cash of the said six factories alone in February, 1902, was more than $27,000,000; and your orator alleges that said six factories as a whole were never afterwards of less value, but were of this value or more at the time of said Plan, and their seizure by the Corn Products Refining Company in 1906.

II.

16. Your orator further shows that the Corn Products Company at its formation, on February 28, 1902, in addition to the six factories aforesaid, acquired 29½ additional factories, with the stock and good will of the companies owning the same, and also with ample working capital as follows: namely; 4½ of said factories engaged in manufacturing glu-

Amended bill of complaint.

cose were bought by acquiring the stock of the Charles Pope Glucose Company, with its two factories at Geneva and Venice, Illinois; and the factory at Pekin, Illinois, was acquired with the stock of the Illinois Sugar Refining Company; and 49% of the stock of the New York Glucose Company with the same per cent. of its factory at Edgewater, New Jersey.

17. And said company also acquired the stock of the United States Glucose Company; which last named stock with its glucose factory and the remaining 24 factories of the 35½ 360 factories aforesaid, which were starch factories, were acquired by the purchase then made of the entire stock of the National Starch Company; by which they were up to February 28, 1902, owned.

18. That the Corn Products Company acquired by exchanges of its own capital stock, amounting to $80,000,000, practically all the said stocks, and with them the factories of said companies; and paid therefor by apportioning the shares of the Corn Products stock as follows: (1.) It paid $46,082,050 of Common and Preferred stock as above stated for said Glucose Sugar Refining Company stock of $40,000,000 with its six factories aforesaid. (2.) That it paid $7,125,240 Preferred stock and $15,539,565 Common stock for said 49% of the New York Glucose Company stock amounting to $1,225,000; and for $750,000 of the shares of the Illinois Sugar Company with its factory at Pekin; and for $120,000 shares of the Charles Pope Company stock with its two factories at Geneva and Venice; and the Corn Products Company also acquired in consideration of the stock given for said three and a half factories last named, $1,400,000 in cash for additional working capital; the sum paid in cash by said Corn Products Company at the then value of its stock so paid, was $12,673.012.

19. That the sums paid for the factories at Geneva and Venice and Pekin were the sums upon which dividends had always been paid; and the factory at Pekin is that claimed by the Corn Products Refining Company, defendant, in its statement of 1907, as that in the best location for a glucose plant and also as being extended in grinding capacity for that reason. That in the purchase for the stock and factories, twenty-five in number, of the National Starch Company, there was apportioned, and paid for them, $3,469,000 Preferred stock, and $2,201,220 Common stock; making the sums paid in cash as ascertained by the value of the Corn Products shares on the New York Stock Exchange at the time, namely $4,132,212.

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20. That said National Starch Company had a capital stock of $10,000,000, of which half was Preferred stock upon which a dividend of 6% had been paid ever since the organization of said company in 1900, and it had also a bonded debt of $7,763,000 upon which it had paid interest; and upon which interest has ever since been paid.

That said twenty-four starch factories included most of all the starch factories in the United States, and supplied most of the entire market for starch of every standard quality; and included all the factories of the greatest reputation, producing goods of the highest excellence and favorites in every household; in which should be named especially Kingsford's, and various factories, Erkenbrecher's, Gilbert's, Argo's and others, of national reputation, and all worth every dollar of the capitalization and indebtedness above described.

21. And your Orator alleges that outside the 49% of the New York Glucose Company's stock, the factories and stock of the constituent companies of the Corn Products Company as stated were fully worth the values of the stock of said Corn Products Company paid therefor; and that the cash value of said Corn Products Companies stock determined by its price as fixed by the market of the New York Stock Exchange at the time of the formation of said company,
361 amounted to a total of $44,413,019, and they continued to be worth this sum up to the time in 1906, when they were nominally given to the Corn Products Refining Company of New Jersey, and surrendered by the terms of said Plan at a loss of $20,000,000, as elsewhere more fully stated.

22. Your Orator further shows unto your Honors that the actual earnings of said 35½ factories of the Corn Products Company, as shown by the annual statements of said defendants have been such as to show the solid basis upon which the value of said stock rests and are as follows. Earnings from February 28, 1902, to February 28, 1903, the first year, the Corn Products Company earned $4,013,841.

Earnings for the year, ending Feb. 28, 1904, $5,571,003.

Earnings for the year, ending Feb. 24, 1903, $2,885,148.

Earnings for the year, ending Feb. 28, 1906, $2,885,148 (estimated), report suppressed.

Earnings of 49% of the New York Glucose Company; for the year ending December 31, 1904, $391,851; and for the year ending December 31, 1905, $307,252, as reported.

That the total earnings of the Corn Products Company for

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the years from February 28, 1902, to February 28, 1906, were $16,054,253, as shown by the annual statements of the defendants themeslves, excepting only for the one year from February 28, 1905, to February 28, 1906, which have never been reported, being due after the liquidation of said company by the Standard Oil Company and its associates, and so its earnings have been assumed to be equal to the reported earnings of the previous year, the smallest in its history, namely, $2,885,148.

That these large earnings were expended by the Corn Products Company in dividends to the amount of $6,942,049.

That said earnings were further expended in repairs and rebuilding and remodeling of its factories, namely, $3,538,003.

That said earnings were further expended by paying the interest upon the debts of the New York Glucose Company and of said starch companies, namely, $1,662.598.

23. That there remained a surplus of nearly $4,000,000 belonging to the Corn Products Company on February 28, 1906; and to this should be added its working capital to the amount of at least $3,000,000; a total of $7,000,000 of surplus and unexpended earnings; and this prosperous company did not then owe a dollar of indebtedness, and its capital of $80,000,000 was invested in the stock of thirty-five companies and their thirty-five factories worth every dollar of said capital and besides in the 49% of the said New York Glucose Company and its factory.

24. Your Orator further alleges that the said Plan is an old and ingenious device by which the stockholders of the Corn Products Company, and of your Orator are to be forced into a surrender of their stock under this Plan to the Standard Oil Company, through its new agent, the Corn Products Refining Company of New Jersey; that the name itself of the Corn Products Company in 1906, when in its most prosperous condition was taken from the list of companies listed upon the New York Stock Exchange, by the action of the
362 Standard Oil Company and their fellow associates and defendants, and substituting the name of the new company in order that the stockholders of the Corn Products Company could have no other disposition of said stock except that furnished by the Plan.

That the said Standard Oil Company keep on foot the nominal entity and control of the Corn Products Company and now retain its stock so far as exchanged under this Plan for that of the Corn Products Refining Company; and the

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Board of Directors is selected from the Directors and Agents of the Standard Oil Company, and entirely in their interests, and the factories are in possession and under control of the Standard Oil Company, every one of the thirty-eight factories charged in said plan, being so managed as the property, and in the name of the Corn Products Manufacturing Company, and conducted under orders from the Standard Oil Company through said Corn Products Refining Company; and that each one of the factories is managed from the office of the Standard Oil Company at 26 Broadway, New York; and the manufacture and sale is conducted without any consideration for the real interests of your Orator, and the stockholders of said Corn Products Company, but solely for the benefit of the Standard Oil Company, yet the said Standard Oil Company ingeniously keeps on foot through its agents and subsidiary companies the pretense of management and control through the Directors of the Corn Products Company aforesaid, who are simply agents of the Standard Oil Company.

That the very name of the Corn Products Company does not longer appear in the market, is unknown in the production and manufacture of glucose and by-products; and for purposes of concealment and to defeat all publicity or knowledge of what has occurred, the very brands, trade marks, good will of the Corn Products Company, and every detail of its manufacture and sale is now done in the names of said companies, scarcely distinguishable from that of the Corn Products Company; that the factories are run in the name of the Corn Products Manufacturing Company, and the business is done in the name of the Corn Products Refining Company; that the Corn Products Company has no office or telephone, and its stockholders are denied all information of its business; and every attempt is made to blot out the name and connection of the Corn Products Company with the said business and manufacture in which it was so successful, and on the eve of its greatest success, and of its brightest future; and the money earned by the 35½ factories of the Corn Products Company amounting annually to $7,000,000 a year, are now pouring into the hands of the Standard Oil Company, at 26 Broadway, New York.

25. Your Orator alleges, that the Standard Oil Company was really the Trustee of your Orator, and managed the business and property of your Orator and fellow stockholders during the entire history of said Corn Products Company, and

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up to and ever since the said conspiracy charged in this bill; that said Standard Oil Company and their co-defendants have been in said position of trust and are now in said position of trust, for your Orator and other stockholders in like condition, and should be made to account for the profits they
363 have made in said business of said Trust, and should be compelled to surrender it through the appointment by this court of a receiver.

Your Orator alleges that the Standard Oil Company began its campaign and conspiracy to create this monopoly in the manufacture and sale of starch and glucose, in 1898, by the formation of the New York Glucose Company of New Jersey and the construction of its factory at Edgewater, Bergen Point, New Jersey. That in 1898, had been recently formed the Glucose Sugar Refining Company of New Jersey, which with its six factories in Illinois controlled the manufacture and market of said products; and the factory at Edgewater, New Jersey, was intended to secure the monopoly of said manufacture and markets for the Standard Oil Company; that finding its first move in building its factory was abortive, because it was built outside the corn belt and could not be used to manufacture economically, the said Standard Oil Company joined in a wider combination and assisted in forming the Corn Products Company of New Jersey, and managed to have apportioned to it in said formation one-fifth or thereabouts of the Corn Products Company's $80,000,000 of stock but said Standard Oil Company only put into said Corn Products Company 49% of the stock of the New York Glucose Company, reserving the control, the better to accomplish its purposes; that the fellow stockholders of the Corn Product Company, including the stock of thirty-five companies engaged in the same manufacture, very soon found themselves in the control of the Standard Oil Company; especially because the Standard Oil Company by the formation of the Corn Products Company had gained access to the patents, trade secrets, and everything that gave it the business success; and still more because the Standard Oil Company were thereby enabled to name the Directors of the Corn Product Company, and placed in said Directory one of its ablest Directors, Edward T. Bedford, who dominated the Company and continued its Director with other associates, really Directors of the Standard Oil Co., itself or its agents, thereafter. That the manufacture and market of the Corn Product

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Company was from its formation controlled by the Standard Oil Company, though without the knowledge of its stockholders to the real extent of such control, until later developed by the sequel when the said Bedford, and his associates, in the New York Glucose Company presented and since have enforced up to this hour the said Plan hereinbefore stated and shown.

26. That there were outside the Corn Products Company the factory of the Warner Sugar Refining Company at Waukegan, Ill., and another factory of the St. Louis Sirup and Preserving Company, at Granite, Ill., besides other factories in the Corn belt engaged in the manufacture of Starch or glucose, and the Standard Oil Company found it necessary to complete its monopoly to buy up the said two factories to make its monopoly more effectual. That in order to buy and control the Stock of the Corn Products Company required a further investment of but one or two million of dollars, but this was effected through the agency of the New York Stock Exchange, upon which said Standard Oil Company caused the stock of the Corn Products Company to be listed, and by the devices familiar to said company of fictitious sales and purchases from and to themselves of the stock of the
364 Corn Products Company, said Standard Oil Company easily and profitably raised and lowered the stock of the said Corn Products Company; so that at one time it was worth one hundred cents and at another time ten cents or less, judging of its value by the index furnished by the sales so manufactured on the New York Stock Exchange; that these fictitious sales and purchases were begun in 1902, and were continued during the life time of the Corn Products Company by said Standard Oil Company, and were aided by actual statements of the said Corn Products Company required by law annually, which, and rumors of the same nature, furnished alleged facts, so much to the prejudice of the Corn Products Company, half truths, and other falsehoods, that aided the Standard Oil Company in its campaign upon the New York Stock Exchange; so that finally after the conduct of said campaign during 1903, 1904 and 1905, these false sales and purchases, led to sales of real stock to said Standard Oil Company, at prices named by the Standard Oil Company. That the campaign of the Standard Oil Company was in point of fact financed from the inside of the Corn Products Company, and so it is that said Standard Oil Company, absolutely controlled, and controls, the majority of the stock of the Corn

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Products Company. That by the device of the Corn Products Refining Company of New Jersey and the bargains shown in the Plan already detailed, said Standard Oil Company in effect have been given them $15,000,000 at least for the pretended consideration of said two factories at Waukegan and St. Louis and of said 51% of said New York Glucose Company, and have placed the new company permanently in the hands of themselves and their Directors. That said Standard Oil Company has thus by easy stages and at slight cost, if any, but through the ruin of the said stockholders of the companies owning the said thirty-eight factories, obtained the entire business of the manufacture and sale of glucose and starch products in the United States.

27. Your Orator further alleges that the said Plan is especially inequitable as against your Orator and other Preferred stockholders of the said Corn Products Company. That they are invited by this Plan to give up one-third of their Preferred stock to the amount of $10,000,000, and its 7% yearly dividends. That the surplus then existing in 1905, was abundantly sufficient to pay such dividends as so contracted to be paid. That said Plan requires a surrender of their stock, ignoring entirely such interest at 7% due them; and the owners of said stock have ever since under this Plan and management and control and monopoly, suffered the loss of said interest and will continue to suffer that loss until the property is taken out of the hands of said defendants.

Your Orator alleges that the contract under which your Orator and other stockholders held their stock and stated in the charter of said Corn Products Company, and repeated in the Certificate of the Preferred and the Common stock aforesaid, issued to your Orator, or held and owned by it, is as follows, namely:

"The holders of the preferred stock shall be entitled to receive when and as declared from the surplus or net profits of the company yearly dividends at the rate of 7% per annum and no more, payable quarterly on dates to be fixed by the by-laws. The dividend on the preferred stock shall 365 be cumulative and shall be payable before any dividend on the common stock shall be paid or set apart so that if in any year dividends amounting to 7% shall not have been paid thereon the deficiency shall be payable before any dividend shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock

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or all previous years shall have been declared and shall ave become payable and the accrued quarterly installments or the current year shall have been declared and the com- any shall have paid such cumulative dividends for previous ears and such accrued quarterly installments or shall have et aside from its surplus or net profits a sum sufficient for he payment thereof, the board of directors may declare divi- ends on the common stock payable then or thereafter out f any remaining surplus or net profit * * *

In the event of any liquidation or dissolution or winding p, whether voluntary or involuntary, of the company, the olders of the preferred stock shall be entitled to be paid n full both the par amount of their shares and the unpaid ividends accrued thereon before any amount shall be paid o the holders of the common stock."

28. Your Orator alleges that these provisions in the con- ract of the Preferred stock, as above stated held by your rator, were and are a part of the contract and contracts ith your Orator as to each amount and all amounts of the aid shares of Preferred stock held by it, and were in full orce and binding upon the said Corn Products Company nd all other persons dealing with said Corn Products Com- any at all times during its history and are still in force nd have never been set aside or destroyed by any action r consent upon the part of your Orator, but your Orator lleges and shows unto your Honors, that by said action of aid Trustees, the defendants herein, in the attempted execu- ion of said Plan, all the said property of the Corn Products ompany have been taken out of its hands, wrongfully and ithout right, and that its factories, and all its business, nd its market, good will, trade secrets and patents, and censes, necessary to the conduct of business, are now wrong- lly in the possession, management, and control, of the tandard Oil Company, and others of said defendants, and the aid Corn Products Company and the rights and interests of our Orator have been annihilated, by and under the execu- ion of said Plan and in pursuance thereof.

29. Your Orator further shows unto your Honors, that said lan effects the preservation of a part of the common stock f the Corn Products Company and thereby secures to the onspirators the consequent control of both the Corn Products ompany and the Corn Products Refining Company accom- lished by the defeat and confiscation of the Preferred stock

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and of its preference; for it is claimed by said defendant that it was wise with due regard to the interest of all parties to cut down the Preferred stock and thereby take away $10,000,000 of the money put into it, yet at the same time it is also pretended and the Plan secures to the holders of the Common stock a value capitalized at $33,444,000 in the capital stock of the Corn Products Refining Company; and it is now, as the sequal shows, pretends that a dividend can be shortly made on this very common stock of the Refining Company.

366 So that your Orator respectfully shows unto your Honors, that this common stock secures the control of the Corn Products Company and of the Corn Products Refining Company and can be manipulated into this immense sum; although said common stock was not entitled to a penny under the terms of said charter of the Corn Products Company until all of said Preferred stock, including the $10,000,000 of the Preferred stock cut off by said Plan had first been paid in full and until all unpaid cumulative dividends and interest thereon were also paid to the last dollar.

That it is the truth and your Orator charges that this Plan was made to effect the common objects of said conspirators namely: (1st) To secure to the Standard Oil Company the $17,000,000 given by said division in behalf of the factories held by it, and (2nd) to give value to the Common stock of the Corn Products Company which had been theretofore bought up by the Standard Oil Company and its said associate defendants in said conspiracy, and (3rd) the creation of the said monopoly of the manufacture and sale of glucose, starch and by-products. That as elsewhere stated in this bill the Standard Oil Company by the manipulation of the market, by the sale of the stock of the Corn Products Company on the New York Stock Exchange for years, without reference or regard to the real value of the stock and by fictitious sales of stock, that never were made or delivered, reduced said stock to nearly a tenth of its value. That a majority of the stock of the Corn Products Co. being acquired by this monstrous series of operations backed by the irresistible wealth and influence of the Standard Oil Company, and with entire indifference to the interests of other stockholders, the said Standard Oil Company was able at its pleasure, and at a price fixed by themselves, to acquire from their worn-out stockholders when compelled to sell, and

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now control, the greater part of the $80,000,000 of actual capital and money of the Corn Products Company, and are now managing the business of all the property which they have acquired substantially for nothing, financed by itself and at the sacrifice of many individual stockholders, including your Orator, as elsewhere stated in this bill.

30. That your Orator had the right, specially contracted to stockholders of the same class, Preferred and Common, to have the $80,000,000 of assets of the Corn Products Company given to said stockholders in the order fixed by their respective contracts, and cannot be ousted of the same by and in behalf of their Trustees.

That the Preferred stock must be paid and after that the Common stock had a right to be paid out of the assets of the Corn Products Company; and that said stockholders had a right to refuse the bargain and substitute presented to them by their Trustees by this Plan. That the assets of the Corn Products Company were sufficient many times over to pay the Preferred stock without the surrender of a dollar of it. That what remained of the assets of the Corn Products Company was sufficient to pay the stock of the Common shareholders of said company, and it was a criminal act to compel said stockholders to have their properties destroyed and their independent right to control annihilated by this Plan, and the creation of this monopoly was an unjust
367 and unlawful change of this condition.

31. Your Orator alleges that if the assets of the Corn Products Company were distributed in a Court of Equity, such court would have distributed to the Preferred stockholders full payment at par of their stock, instead of the liquidation under this Plan by which the Preferred stockholders must surrender one-third of their stock, including back dividends and interest, in order to give place to the common stock which is left a large residuum; that the assets of said Corn Products Company were ample to effect such distribution in a court of equity and that the effect of this Plan not only causes this injustice, but to this must be added the fact, that the price on the New York Stock Exchange of Preferred stock of the Corn Products Refining Company, if accepted as an index of its value, shows that this Plan compels a sale of the Preferred stock of the Corn Products Company or its exchange for the Preferred stock of the Corn Products Refining Company, worth less than 42 cents on the

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dollar, and this sacrifice is coupled with the assurance that the Corn Products Refining Company must manage the 35½ factories under the control of the Standard Oil Company engaged in the misconduct and criminal violations of law for which the National government is demanding its punishment.

32. Your Orator further shows unto your Honors, that the facts herein alleged in regard to the action of the defendants in this conspiracy aforesaid remained unknown to your Orator until within a short time, a few months at best, when they were learned little by little, information being denied and withheld by said trustees, as were the said defendants; and it charges that no notice was given to your Orator by defendants of any of their action or proposed action aforesaid, as set out in this bill, and what knowledge your Orator has obtained was gathered from time to time, and only after having been first concealed from it, and only learned with difficulty; one of the acts of concealment showing the secret manner in which they were done, namely, was that the very name of the Corn Products Company was counterfeited and concealed by the name given to the Corn Products Refining Company and of the Corn Products Manufacturing Company, and their actual existence and relations were concealed. That these devices of said conspirators were meant to conceal, confuse and deceive your orator and other stockholders not in the said conspiracy; and your Orator alleges that had the truth been known to it it would have filed a bill in apt time to prevent the execution of said Plan and the consummation of said conspiracy. That your Orator alleges that it has been unable to learn or state more fully than as herein set forth how the designs of the said conspirators were effected and with what action, if any, of record, in any book or books, showing the conduct and action of the directors of the Corn Products Company, or of the Corn Products Refining Company (if they were so preceded, accompanied or followed), nor whether a merger was attempted, or if so, how made, under the color of the law, or laws, of New Jersey, or what will be so claimed by said defendants in that regard; but your Orator shows unto your Honors and charges, that whatever was done by said defendants for said end or ob-
368 ject, whether by merger or otherwise, in said conspiracy, was wrongful, fraudulent, and grossly inequitable as against your Orator; and that said Plan, the formation and

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apportionment of said Corn Products Refining Company, were unequal, unjust and inequitable, as elsewhere more fully shown.

33. Your Orator further shows unto your Honors that the Standard Oil Company and its Directors, including the Directors of the New York Glucose Company, and the Directors of the Corn Products Refining Company, as well as the Directors and Officers of the Corn Products Company, who were all engaged in the conspiracy herein described, were in reality trustees for the stockholders of the Corn Products Company, including your Orator. That they managed and controlled the Corn Products Company and its business for their own benefit; that they bought the factories of the Warner Company at Waukegan and of the St. Louis Company at Granite City, using the control of the market of glucose, and of the market on the New York Stock Exchange of the stock of the Corn Products Company to that end, and for the purposes of said conspiracy; and that in addition to the loss directly inflicted upon your Orator of said stock, the said conspirators by their manipulation and misconduct, destroyed the value to a great extent of the stock of said Corn Products Company, and inflicted a loss of $2,000,000, outside of the stock aforesaid still owned and held by it upon your Orator, the value of the stock of the Corn Products Company disposed of by him at a great loss caused by the said Standard Oil Company and its associates in said conspiracy, who compelled and enforced the sale to themselves, for which loss they are liable as trustees who have violated their trust for their own benefit in this and the other various manipulations of the stock values of the New York Stock Exchange, and of the property of your Orator and other stockholders of the Corn Products Company, as elsewhere stated fully in this bill.

34. Your orator shows unto your Honors, that this condition, to which the Corn Products Company is reduced, is in effect a form of liquidation by which the Trustees of the stockholders of the Corn Products Company hold its assets and prevent the distribution due the stockholders until they are ready to accept what should be given them by this Plan. That it is one of the most effective devices known by which the predatory corporations achieve their ends. That it is in effect in contempt of the law; that it preserves the skeleton, cheats all interested, and is calculated to enable the beneficiary to

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was advanced to 24 cents per gallon in July, 1906, and the public will be compelled to pay whatever the said Bedford and his Standard Oil friends choose to demand, and this is not a beneficial monopoly.

38. At the time your orator purchased said stock, as aforesaid, and for a long time prior thereto, and for a considerable period thereafter, the capital stock of the said Corn Products Company was duly listed upon the stock exchanges of New York and Chicago, and other large cities, and was daily bought and sold, in open market, as one of the standard investments of the country, the market value thereof being as above stated, and the same was based upon the ownership of the properties above described, and other valuable properties and the profitable manufacturing business to the carrying on of which all the said properties were devoted by the parties aforesaid, for the benefit of the said Corn Products Company, and its stockholders, including your Orator, as aforesaid; and, in reliance upon the said facts, your orator acquired the said stock, and your Orator has ever since held, and still holds the same to the extent stated already in this bill, for such purpose, and at the time your Orator so acquired the same, and afterwards, the said Corn Products Company was paying, regularly dividends to the holders of the said stock, including your Orator, on the par value of said stock, from the profits of the said business so controlled by the said Corn Products Company and so conducted and managed for the benefit of the said Corn Products Company, and its stockholders, including your orator; and it was the duty of the said Corn Products Company, and its officers and directors, to continue to so manage its affairs, including the said properties and business above mentioned, through its control thereof, as aforesaid, that such dividends upon the stock should and would continue from year to year, and your Orator avers that if the said Corn Products Company, and its officers and directors, had, honestly and in good faith, continued its said business, and the management thereof, the said stock of your Orator, together with the stock of other stockholders in said Corn Products Company, not parties to said conspiracy, would still be earning and paying such dividends, and now be worth one hundred ($100) dollars per share; but, instead of that now being the case, your Orator avers that by reason of the bad faith, and misconduct, of the officers

and directors of the said Corn Products Company, and Amended bill of complaint.
371 others, pursuant to and as a part of the said conspiracy, the entire stock of the said Corn Products Company, has by reason of the said conspiracy and the said wrongful conduct, pursuant thereto, ceased to be listed stock, and ceased to pay or earn dividends, and its value has thus been entirely destroyed, the said conspirators having fraudulently caused the same to be dropped from the list of the said stock exchanges, and have fraudulently stopped the payment of dividends thereon pursuant to said conspiracy, and are now managing all of the said properties in the exclusive interest of said conspirators, and in total disregard of the rights of your Orator as the owner and holder of the said stock, and in total disregard of all the rights of the holders and owners of the stock of the said Corn Products Company, other than said conspirators.

39. Your Orator further represents that, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, said conspirators are now planning and arranging to cause all of the said properties and the said business to be transferred and conveyed to the said Corn Products Refining Company, or to said aforesaid defendants or others, and thus permanently destroy the value of your Orator's said stock and the value of the other stock of the said Corn Products Company held or owned by persons or parties other than said conspirators, and your Orator brings this Bill of Complaint not only for the benefit of your Orator, but also for the benefit of the holders and owners of the stock of the said Corn Products Company, in the same situation as your Orator, and said other holders and owners of the said stock are hereby invited to come in as co-complainant with your Orator in this Bill of Complaint, and to share in the benefits of whatever relief may be obtained under or by virtue of this suit, upon contribution of their pro rata share of the expenses thereof.

40. Your Orator is informed and believes, and so charges the fact to be, that the said stock of said thirty-five and one-half companies and factories, and with the other properties and assets of the Corn Products Company, are now about to be transferred and conveyed to the said Corn Products Refining Company, or other parties, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, and will be so transferred and conveyed unless the said conspirators, hereinafter made defendants to this Bill of Complaint, be

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restrained from so doing, or causing the same to be done, by the order of this court, thereby working irreparable injury to your orator, and to the other stockholders of the said Corn Products Company, not parties to said conspiracy.

41. Your Orator further represents that the officers of said Corn Products Company are as follows, namely: J. A. Moffett, President, W. J. Matthiessen, Vice President, and F. T. Fisher, Treasurer; and the Directors of said Corn Products Company are as follows, namely: Charles L. Glass, William J. Calhoun, W. H. Nichols, Joy Morton, W. J. Matthiessen, F. Q. Barstow, J. A. Moffett, Edward T. Bedford, T. B. Wagner, William W. Heaton, F. T. Fisher and William C. Sherwood; and your Orator is informed and believes and so charges the fact to be that all the officers and directors of the said Corn Products Company are either parties to
372 the said conspiracy or so interested with said conspirators that none of them will take any steps to prevent the carrying out of the said conspiracy for the fraudulent purposes aforesaid; that they are really acting as nominal directors of an automaton without any initiative and absolutely subject to the control and orders of the Standard Oil Company of New Jersey in which many of them are Directors and Officers or clerks and agents or attorneys, as elsewhere stated; and said Corn Products Company is really serving its enemies and in a state of suspended animation, as elsewhere stated in this bill.

42. Your Orator further represents that the said Corn Products Refining Company is a giant pool, and trust, and combine, formed by said conspirators for the purpose of unlawfully regulating and fixing and controlling the price of glucose and grape sugar, and other products, all of which are articles of merchandise and commodities manufactured and sold in this state, and through the United States; that the names of the persons forming such pool, trust, and combine, other than these hereinbefore mentioned, are now unknown to your orator, and your orator has not been able, after diligent inquiry, to ascertain the same, but your Orator is informed and believes, and so charges, that all the persons above named, including the said officers and directors of the said Corn Products Company, are parties thereto, or interested therein, together with others unknown to your Orator; that said pool, trust and combine is to be accomplished, and carried out, and made effectual for the purposes aforesaid,

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under the forms of the law, namely: in and through such corporation under the name of the said Corn Products Refining Company; that the parties organizing, creating, promoting and managing or interested in the said pool, trust and combine, are now perfecting their arrangements, with the intent and purpose of unlawfully monopolizing, controlling, regulating and fixing the price of glucose and grape sugar and by-products within the State of Illinois, and throughout the United States, and for such fraudulent and unlawful purpose, as well as for the further purpose of defrauding your Orator or your Orator's said stock and defrauding other holders of the stock of said Corn Products Company similarly situated with your Orator, have already arranged to obtain control of substantially all the corporations and individuals heretofore engaged in the manufacture and sale of said commodities throughout the United States, and the said Corn Products Refining Company will, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, unlawfully acquire and now hold complete control of the said corporations and individuals, and of the manufacture and sale of the said products, throughout the United States, unless restrained from so doing by the order or decree of this Honorable Court; that the purpose and intent of the said pool and combination, and of the said parties forming the same, or interested therein, jointly and severally, and especially of the Standard Oil Company, is to create a trust in, and a complete monopoly of, the said articles and commodities, and give to the Corn Products Refining Company, as the representative and embodiment of such trust, and pool, and combine, the power to regulate and fix, and absolutely control both the supply and the price of said artices and commodities, in the State of Illinois, and throughout the United States, amounting now 373 in the aggregate to several billions of pounds annually and consuming many millions of bushels of corn, annually; that said pool and trust and combine, and the effect, intent and purpose thereof, and the intent and purpose of the parties forming the same, or interested therein, as aforesaid, is in direct violation of the laws of this state, and of the United States, and in violation of the statutes of this state in and for such case made and provided, and for the purpose and plan of the said pool, trust and combine, and of said parties forming the same, or interested therein, is to swallow up

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and merge in the said Corn Products Refining Company, all the organizations and plants in the United States, heretofore engaged or used in the manufacture or sale of said articles and commodities, or any of them, issuing to the said organizations heretofore so engaged stock in the said Corn Products Refining Company to hereby perfect its control of said organization, and, where this method fails, to buy said organizations and plants for cash or its eqivalent, and, in any event, to thus merge and swallow up all the said organizations and plants, including the said Corn Products Company, in said pool, trust and combine, thus leaving to your Orator, and other stockholders similarly situated, the option only of participating in such unlawful trust, pool and combine, or submitting to the destruction of the stock so held by your Orator, and others similarly situated in said Corn Products Company, or the destruction of the value thereof, and your Orator charges that the officers and directors, and majority stockholders of the said corporations, defendants herein named, are actively and knowingly, and unlawfully, aiding and participating and joining in, said trust, pool and combine, and preparing fraudulently and unlawfully to sell and transfer all the said plants and properties of the said Corn Products Company to the said Standard Oil Company or to the said Corn Products Refining Company representing said Standard Oil Company, for the unlawful and fraudulent purposes aforesaid, and will so do unless restrained therefrom by the order or decree of this Honorable Court.

43. Your Orator further charges that the forming and carrying out of the said pool, trust and combine, in and by the formation and action of the said Corn Products Refining Company, pursuant to said conspiracy, is an unlawful and fraudulent stock-jobbing scheme and frenzied finance upon the part of the said conspirators, for the purpose of fleecing the public, as well as your Orator, and others similarly situated, in the devious ways and methods originating in Wall street, and practiced by financial pirates, constituting "the system" by which the public are fleeced and plundered continually, and by which it is intended by said conspirators to freeze out and defraud your Orator, as the holder and owner of the said stock in the said Corn Products Company, and other holders of such stock, not parties to such conspiracy, all of which is contrary to equity and good conscience and in violation of the Common law and laws of this state.

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44. Your Orator further represents that a part and parcel of the plan of said conspirators, in carrying out the said conspiracy, is to dismantle and destroy such of said plants 374 as are now yielding profits applicable to the payment of dividends on the said stock belonging to your Orator, and others similarly situated, and build up and operate other plants for the manufacture and sale of said products, from the earnings of which dividends will be paid to said conspirators, exclusively, and not to your Orator, or others similarly situated, all of which is pursuant to said conspiracy, and for the fraudulent purposes aforesaid, there being now no occasion for the sale or transfer of any of the plants, controlled, aforesaid, heretofore, by said Corn Porducts Company, and from the net earnings of which plants dividends have heretofore been paid, and ought to continue to be paid to the holders of the stock of said Corn Products Company including your Orator, and there is now no occasion or excuse for the dismantling or abandonment, or destruction, of any of the said plants, but it is to the interest of the public, and to the interest of your Orator, and other stockholders of the said Corn Products Company, that all of the said plants continue a seperate existence and business, and carry on the same, without becoming merged and swallowed up in the said Corn Products Refining Company constituting the said pool, trust and combine, as aforesaid, for the manufacture of the said products has already become profitable, and is becoming more profitable every year, and all that prevents such profitable conduct of said business for the benefit of your Orator, and others interested therein, is the fraudulent conspiracy aforesaid, and the said unlawful action and conduct of the parties thereto, pursuant to the conspiracy aforesaid, and to the end that such fraud may be prevented, your Orator is advised and believes ,and so charges, that a receiver should be appointed by this Honorable Court of the said Corn Products Company, and its property, and, particularly, of the said plants thirty-five and one-half lately owned and held in the name of and operated by the said Corn Products Company, in Chicago, Illinois, and in Peoria, Illinois, and elsewhere and that said plants be managed and operated by said receiver, under the orders and directions of this Honorable Court, pending the hearing of this cause, and the said conspirators thereby ousted from the possession or control thereby, and a reorganization had of the said Corn Products Company, and of the several corporations heretofore controlled

Amended bill of complaint.

by said Corn Products Company, under the orders and directions of this Honorable Court, and that said conspirators, including said Corn Products Refining Company be enjoined from paying any dividends and from making, or causing to be made, any sale, or transfer, or conveyance, of the said properties, or plants, or any or either of them, or any part thereof, to said Corn Products Refining Company, or any other or others of said conspirators, or to other corporations or persons.

45. Your Orator further represents and charges that all the acts of the said conspirators above named, or referred to, and of said pool and trust and combine, and of the parties forming or interested therein, have been and are with the fraudulent intent and purpose to thereby effect a combination of many millions of dollars of capital, and skill, and firms and corporations, and individuals, to limit and control the production of glucose, starch and by-products, and other commodities, and regulate, and fix, and control, and change
375 at the will of said conspirators, the price of the same, and to prevent competitions in the manufacture and sale of such products, all of which is in violation of the Statute of Illinois, entitled: "An Act to provide for the punishment of persons, copartnerships or corporations forming pools, trusts and combines, and mode of procedure and rules of evidence in such cases," approved June 11, 1891, in force July 1, 1891, and of other statutes of said state, and with the intent and purpose on their part to place the control, of such products in the hands of the said trustee, the said Corn Products Refining Company, and thereby control the price and supply and manufacture thereof, in violation of the said Statute of the State of Illinois, and in violation of the common law of the State, and its Statutes in and for such case made and provided, and of the statutes and laws of the United States.

46. Your Orator further represents that the glucose business has grown to enormous proportions in this country, and its products are everywhere in use, and of vast commercial importance, in their varied and manifold uses, and in carrying on of such business great skill and vast capital are employed and required, and it is for the interest of the public that competition be unrestrained and uneffected by such pools and trusts, and combines, as the said Corn Products Refining Company, it not being an easy matter for persons or corporations to go into and engage in such business, as it requires considerable time and much capital to erect plant

Amended bill of complaint.

for the same, and many of the most important processes are patented and owned or controlled heretofore by the said several corporations above named, other than the said Corn Products Refining Company and said Standard Oil Company aforesaid, and it requires skill and experienced men to erect and operate such plant, and the supply of such men is limited, and not equal to the public demand, and it will be impossible to compete with the Standard Oil Company, or its agents or its agent said Corn Products Refining Company in such business, in the State of Illinois, or elsewhere in the United States, unless such conspirators be prevented from carrying out their conspiracy aforesaid, and, if such conspiracy be so carried out the said property of your Orator and others similarly situated will be entirely destroyed, and the said pool, trust and combine, would be in complete control of said products throughout the State of Illinois, and throughout the United States, and all competition therein thus prevented.

47. Your Orator further represents that said pool, trust and combine, formed under the name of the said Corn Products Refining Company, cannot succeed in its said fraudulent purposes, unless it secures control of the said plants located in Illinois, and a prevention of its control thereof will prevent the carrying out of the conspiracy aforesaid, as the State of Illinois is the center of the corn belt of the United States, and if free competition be maintained in this State, in the manufacture and sale of such products, the welfare of 376 the entire public will thus be promoted, and the loss of the stock of your Orator, and others similarly situated, in the said Corn Products Company, will be, at the same time, thus prevented, and your Orator charges that whatever may be the form, or forms, adopted and to be adopted, or pursued, by said conspirators, forming or constituting the said Corn Products Refining Company, the substance and effect thereof is, and will remain, a united control of the plants and corporations of this country engaged in the manufacture or sale, of said products, by and in the name of the said Corn Products Refining Company; and the formation and operation of the said Corn Products Refining Company, by said conspirators, is simply a mode of union after the manner of the Standard Oil Company, a part of that gigantic monopoly, and constituting a giant monopoly for the purpose of controlling, fixing, and regulating, both the supply and the price, of glucose, and its varied by-products, syrups and sugar,

Amended bill of complaint.

throughout the State of Illinois, and throughout the United States.

48. Your Orator alleges, that the action and policy of the Standard Oil Company by which they have been enabled to destroy the competition and create monopolies in and control many of the leading products of the country, has been in great part effected by secret and criminal rebates, and other advantages given to said Standard Oil Company by the railroad companies of the United States to the exclusion of independent competition, and to the destruction of the capital engaged in such competition; and your Orator alleges that such secret and criminal contracts and rebates, and other misconduct of the said Standard Oil Company will attend the future control and management of the Corn Products Company, and of said Corn Products Refining Company and of said Corn Products Manufacturing Company, and of said thirty-five and one-half factories by whatever agents they are managed under the Standard Oil Company and its allies, if not ousted by the order of this court.

49. Your Orator further alleges and shows unto your Honor that said Standard Oil Co. and its agents, individuals and corporations, the defendants, who have secured the management and control of the property and assets of the Corn Products Co., cannot be trusted with the said management and control, as assured to them by this Plan; yet they are past-masters in the manipulation of market and manufacture to suit their own interests and will destroy and crush the opposition of your Orator and other stockholders who have not surrendered their property under this Plan, by all methods open to corrupt Trustees, and will commit every offense known to predatory corporations of which this defendant, the Standard Oil Company, is easily the first,—offenses against the laws meant to protect the rights of your Orator and of the People of this country against said malefactors, unless prevented by the action of this court. Your Orator shows that said Trustees, the defendants, have already destroyed and junked two or more of said thirty-five and one-half factories and are now engaged in completing the destruction of the factory in Peoria, which was held and regarded as one of the most profitable and successful factories engaged in said manufacture and had cost in its construction more
377 than a million dollars—a factory for which the Corn Products Company had paid more than $2,000,000 in 1902, and the Corn Products Manufacturing Company in August,

1897, had paid nearly two million dollars therefor; and your Orator charges that said factory was destroyed in order to give to him and the objecting stockholders an object lesson of the character and determination of the Standard Oil Company and its co-defendants, and of the policy which they would mercilessly pursue as Trustees. Amended bill of complaint.

50. Your Orator further shows unto your Honors, that the Standard Oil Company through its agent, the Corn Products Refining Company, continues to pay dividends, in favor of itself, and others in its interests; but said dividends were payable upon the Preferred stock of said company, but none to the stockholders of the Corn Products Company, owners of the thirty-five and one-half factories, but payable only to the owners of the two and a half factories, which never before are known to have paid dividends to their stockholders, or are known to have shown net earnings as elsewhere more fully stated in this bill; dividends from pretended earnings of the two and a half factories and their companies holding the same, of which the contribution to this Plan was the said indebtedness of over $3,250,000 created in their short experience.

51. Your Orator further shows that out of the earnings for the year ending February 28, 1907, reported at $6,500,000, not a dollar has been divided to your Orator or the other stockholders of the stock of the Corn Products Company objecting to this Plan—but some millions of dollars are left undivided in the Treasury; and this under color of various pretenses hinted at in said report—every one of which your Orator alleges were and are untrue and made to suit the ends of the Standard Oil Company; that the real truth is that your Orator and other objecting stockholders are to be punished in this amongst many other methods, by this master monopoly until driven to consent to their new monopoly, condemned as a crime by the common law and the Statutes of this State.

52. That to further show the inequitable character of the management of our Trustees who owned the two and a half factories and put them in to this Plan at a profit of nearly $15,000,000, and pretend to make dividends out of their earnings while denying dividends to the owners of the thirty-five and one-half factories, your Orator states unto your Honors the following facts, namely: That the grinding capacities of the thirty-five factories of the Corn Products Company are greater than those of the two and a half factories by five fold; that they had all the experience in the

Amended bill of complaint.

manufacture of glucose, starch and by-products, trade secrets and patents, and had always been successful with immense earnings and dividends as elsewhere shown in this bill; that the market of starch was chiefly in the hands of said Corn Products factories; that the market of the said Kingsford Company alone in the starch business exceeded that of any other factory and was preferred in the market to all others and in every household and with a profitable business for sixty years past, entirely unequaled and amounting to at least $500,000 per year, and certainly worth at a reliable esti-
378 mate in annual profits far more than that of the two and a half factoires put in by said Standard Oil Company.

53. That the management of the business and market of the thirty-five and a half factories of the Corn Products Company cannot be safely entrusted to the Standard Oil Company, because it is a great monopoly and therefore a great and distinguished offender, being prosecuted as guilty of criminal offenses by the National Government, and declared, condemned, and adjudged guilty of great offenses against the policy and interests of the American People; and that the management and control of the assets of $80,000,000 of the Corn Products Company while under control of the said Standard Oil Company, are, and will be, like that of the management and control of the Standard Oil Company itself, and of the many other companies ,and corporations, conducted from its office in 26 Broadway, New York, in contempt of and in conflict with the laws of this state and of the United States and to entrust them with the same is to hand over the ownership, management and control of nearly forty factories of which the greater and more important are situated in the State of Illinois, and if allowed to remain under such control will be in the hands of criminals as held and adjudged by the laws of this state and of the nation.

379 Sec. 54. Your Orator further alleges and shows unto your Honors, that said Standard Oil Company of New Jersey and said Corn Products Refining Company, defendants herein, never were authorized and could not lawfully buy and cannot lawfully hold the said stock nor of any of said defendant corporations or their subsidiaries, or any part of the stock of the Corn Products Company, as elsewhere more fully set forth in this bill; that to buy and hold such stock was and is against the policy of the State of Illinois where the property and factories chiefly lie and where the companies to whom belonged said stock, and property are chiefly

engaged in manufacturing said products; and your Orator alleges that the laws of said State forbid said corporations to buy and hold the stock of said Corn Products Company, or of any of said defendant corporations or of any of their subsidiaries. Amended bill of complaint.

Your Orator alleges that said purchases, sales and holdings of said Corn Products stock, or of any of said defendant corporations or their subsidiaries, by said Corn Products Refining Cmpany and Standard Oil Company were ultra vires, because made to secure and tending to secure a monopoly of the manufacture and business, including the purchase and sale, of glucose and by-products and starch in the United States.

Your orator further alleges that the title of record is now in the Glucose Sugar Refining Company, known as the defendant Corn Products Manufacturing Company, of the six factories above described in this bill, and described as "formerly owned and operated by the Glucose Sugar Refining Company of New Jersey"; and the said factories and plants are now operated in the name of the said Corn Products Manufacturing Company by which name the Glucose Sugar Refining Company is now known; and the stocks of the several companies owning said factories are now still standing in the name of the said Corn Products Manufacturing Company; and your Orator charges that they have never been transferred to, and never were put in possession of the Corn Products Refining Company, and are still owned and held as they were owned and held up to the formation of the Corn Products Company, so far as concerns the legal and equitable title to said factories and stocks; and whatever title or right is now owned, or can be claimed and held by the Corn Products Refining Company, is and must be derived from its ownership of the stock of the Corn Products Company, as elsewhere set forth in this bill; and that the plan has never been completely executed of merging, consolidating, or transferring the $80,000,000 of stock of the Corn Products Company, or of its title and right in said factories and all of them, including the whole of the thirty-five and one-half factories, and the companies owning the same; that said factories and stock have never been legally or equitably transferred or conveyed to the Corn Products Refining Company; and your Orator asks that the execution of said Plan may be stayed and enjoined as hereinafter set forth in the prayer of this bill; and your Orator charges that until such transfers have been

Amended bill of complaint.

made and such conveyances had of the legal title to said stock and of the possession of said factories, the said Plan of Merger or Consolidation in the Corn Products Refining Company is still executory and it is within the power of a court of equity to deal with the said property and with the whole
380 transaction of which their sale and conveyances are a part, as an executory contract.

55. Your Orator alleges that the Standard Oil Company and its co-conspirators never have completely executed this plan, but have left the possession of the thirty-eight factories described in this Plan so that their possession is now in the hands of the Corn Products Manufacturing Company of New Jersey, as their agent, which now conducts and controls the manufacture in the several factories, in obedience to the orders of the Standard Oil Company; and the products thereof, now bear the brands of the Corn Products Manufacturing Company; and your Orator alleges that this Corn Products Manufacturing Company is the old Glucose Sugar Refining Company of New Jersey, which was condemned as a monopoly and offender against the trust laws of the state, and now remains under the condemnation and ban of the laws of this State, as adjudged by the Supreme Court of Illinois; and said manufacture and control of so extensive and important an industry, in open and flagrant contempt of the law, will remain in said criminal corporation until ousted by the Receiver appointed by this Court.

56. That the said Standard Oil Company and its co-defendants intend to vote the stock of the so-called subsidiary companies described in said Plan and in this bill including both the Warner and St. Louis companies, and said Corn Products Company, and the companies constituting or belonging to said Corn Products Company described in this bill, which are believed to be and claimed to be by said defendants as still existing for such purposes as the said defendants choose to promote, and especially to secure the continued existence of said monopoly of said business and manufacture of glucose, starch and by-products and to control and conduct the same in defiance of the laws and the orders and decrees of this court; and your Orator therefore especially prays that the said defendants and each and every and all of them be respectively enjoined from voting the stock of said companies and all of said companies aforesaid.

57. To the end therefore that your Orator may have a remedy and equity in the premises and that the Standard Oil

Company and the said Corn Products Company and the said Corn Products Refining Company and the said Corn Products Manufacturing Company all corporations of the State of New Jersey, and the said Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford and E. P. Wemple, all of whom are hereby made parties defendant to this Bill of Complaint, may be duly summoned to answer the same (but not under oath, the oath to their respective answers being hereby expressly waived); and to the end that a receiver may be appointed of the properties and affairs of the said glucose and starch manufacturing companies, including the Corn Products Company, the Corn Products Refining Company and the Corn Products Manufacturing Company, respectively; and to the end that said defendants, and every of them, respectively, and their respective attorneys, agents
381 and servants, shall be made to account for the moneys they have improperly received, and generally as trustees; and may be enjoined from paying dividends or doing or performing any of the unlawful acts above complained of by your Orator, and, particularly, from selling or conveying, or causing to be sold or conveyed, to the said Corn Products Refining Company or to any other company, corporation or individual, or from meddling with, any of the property now standing in the name of the said Corn Products Manufacturing Company or any of the property and assets of the Corn Products Company, including the said real estate situated in the State of Illinois, and the thirty-five and one-half factories and plants above described; and your Orator further prays that the said defendants, and each of them, and their respective agents, attorneys and representatives, may be enjoined and restrained from interfering with the title or possession of said factories, or the stock of the companies owning or controlling the same described in this bill, and from advising or attempting to control the action of their several and respective officers, directors, or agents, in the management of said factories, or in the business of buying or selling the products of said factories described in this bill, and of each and all of them; that said defendants respectively, may be further restrained from selling or otherwise disposing of the said shares of stock of the Corn Products Company, or from voting the same, or any part of the same, at any meeting of the stockholders of said

Amended bill of complaint.

Amended bill of complaint.

Corn Products Company, and that the stock of the Corn Products Company purchased by or for the said Corn Products Refining Company in exchange for its stock, or otherwise, or held by or for any other of said defendants, engaged in said conspiracy, and used for the purpose of advancing the same may be cancelled; and especially that said defendants may be enjoined from the further execution and enforcement of said Plan or of said conspiracy by conveyances of the title or conveyances of said factories, or of the sites or grounds of the same, or of further carrying out or executing the said Plan; your Orator further prays that the moneys, surplus, working capital, or otherwise, of the Corn Products Company, or received from the Corn Products Company, or derived from any of its factories, or officers aforesaid, and the moneys received by the Corn Products Refining Company, or any of its agents, officers or representatives, from its business, from the manufacture and sale of any of the products of the said factories described in this bill and in this Plan, and claimed to be owned or controlled by said Refining Company, including all the receipts in the hands of said Refining Company or any of its agents or officers, or paid over and in the hands of said Standard Oil Company of New Jersey, and the finished or unfinished product of said factories of said Refining Company, or the moneys received from junking said factories, or otherwise, from the proceeds of the property of the Corn Products Company, may be impounded and placed in the hands of a Receiver appointed by this court, and that the said defendants and each of them may be enjoined from meddling with said moneys, and all and each of the same, and with said property, and from junking and destroying or disposing of the same, and especially may be enjoined from paying out
382 the same upon dividends or otherwise, and in the payment of salaries or otherwise; and to that end there may be a reorganization of the said Corn Products Company under the directions of this Honorable Court; and to the end that your Orator may have such other and further or different relief, in the premises, as equity may require, your Orator prays that a writ of subpoena in due from be issued commanding the said defendants, the said Standard Oil Company and the said Corn Products Company, and the said Corn Products Refining Company, and the said Corn Products Manufacturing Company, the said Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget,

Thomas P. Kingsford, William C. Sherwood, W. H. Nichols, Edward T. Bedford and E. F. Wemple, to be and appear before this Honorable Court to then and there answer this amended Bill of Complaint, and abide by and perform the orders and decree of this court in this cause; and your Orator will every pray, etc.

WILLIAM J AMMEN,
Solicitor for Complainant.

WILLIAM J AMMEN
Counsel.

383 EXHIBIT "A" TO ATTACHED BILL.

Exhibit "A" to attached bill

An Act to Incorporate the "Peoria Starch Manufacturing Company".

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, that Henry Mansfield, Nathaniel S. Tucker, Reuben Rowley, A. L. Merriman and Julius Manning, and such persons as shall become subscribers to the capital stock hereinafter mentioned, be, and they hereby are created a body politic and corporate, by the style and name of the "Peoria Starch Manufacturing Company"; and by that name they and their successors shall have perpetual succession, and shall be capable of suing and being sued, pleading and being impleaded, answering and being answered unto, in all courts of law or equity; to have and use a common seal, and alter the same at their pleasure; to make, amend, alter or revoke by-laws for the government of said company to hold and dispose of, in any manner, real estate and any personal property of any description, whether acquired by purchase or otherwise; to manufacture starch or any other thing; to purchase and use all materials for such manufacture, or to procure the same by barter or exchange; to vend such starch, so manufactured, and such material or other species of personal goods and effects, if by said company deemed expedient, and generally to do and perform all other proper and needful acts as done by corporations.

2. The capital stock of said company shall not be less forty thousand dollars, nor more than two hundred and fifty thousand dollars, which may be fixed and changed within these

Exhibit "A" to attached bill.

limits, by said company, at any time, and which shall be divided into shares of one hundred dollars each.

384 3. As soon as forty thousand dollars of the said capital stock are subscribed, the said company may be organized, by the election of one president, one secretary, and three or more directors; whose election shall be certified by the above named persons, or a mojority of them, in the book of said company.

4. At the first or any other meeting of the stockholders they n.. ordain and establish such by-laws, rules and regulations, as they may deem proper, for the government and management of the affairs of the said company.

5. Said corporation may provide, by its by-laws, for its meeting of stockholders, its officers, their powers and duties, and the terms of its several officers, and the manner of conducting its affairs and business, and the mode and manner of transfer.. g its stock: Provided, said by-laws shall not be in conflic.. with the laws or constitution of this state or of the United Sta.. es. Copies of the minutes, by-laws and records of said company, certified to be such by the president of said company, with or without the corporate seal of said company attached, shall be received as prima facie evidence of the facts therein appearing, in all courts.

6. All the stockholders of said company shall be severally and individually liable to the creditors of said company, to an amount equal to the amount of stock held by them, respectively, for all debts of said company, and all contracts made by said company, until the whole amonut of capital stock fixed and held by said company shall have been paid in, and a certificate thereof shall have been made and recorded, as is prescribed in the following section. And the capital

384½ stock so fixed and limited shall all be paid in, one half within one year, and the other half within two years from the incorporation of said company, or such corporation shall be dissolved.

Approved Feb. 11, 1857.

385 And the said George F. Harding, Sr. and William J. Ammen, solicitors of record herein, object and except to the action of this court in incorporating said notice and said amended bill in this certificate of evidence. And the same were incorporated over their objection.

386 The court certifies that on October 19, 1907, there was in full force and effect in the Superior Court of Cook County, Illinois, a rule of court requiring that every complainant shall file in the Clerk's office of said court an original and an original copy of every bill in chancery at the time such bill is filed; that on October 19, 1907, there was filed in said Superior Court a certain original bill as General Number 263,565 and what purported to be an original copy thereof; that the title page, caption, first page and last page of said original bill and of said original copy of said bill so filed in said Superior Court were in words and figures as follows:

Certificate of evidence, filed April 30, 1908.

(The court directs that a photographic copy of the title page, caption, first page and last page of said original bill and of said original copy thereof, be bade by the Clerk of this court and here inserted, so that the same may appear to the United States Circuit Court of Appeals for the Seventh Circuit as they appeared to this court on the inspection thereof upon the hearing).

Said photographic copies are as follows:—

Term No. 9213 Gen. No. 26356

IN THE

Superior Circuit Court of Cook County

OCTOBER TERM, A. D. 1907.

The Chicago Real Estate Loan and Trust Company, a Corporation,

COMPLAINANT,

vs.

The Standard Oil Company of New Jersey et al.

DEFENDANTS.

A. B. JOYNER,
Solicitor for Complainant.

No. 8 Filed October 19 11-45 A. M. 1907

Clerk.....

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Circuit Court of Cook County

~~OCTOBER~~ TERM, A. D. 1907.

~~The Chicago Real Estate Loan and Trust Company, a Corporation,~~

COMPLAINANT,

vs.

The Standard Oil Company of New Jersey et al.

DEFENDANTS.

BILL OF COMPLAINT.

TO THE JUDGES OF THE SAID CIRCUIT COURT IN CHANCERY SITTING:

Your Orator, ~~the Chicago Real Estate Loan & Trust Company, a corporation, duly organized and existing under the laws of the State of Illinois~~, a resident and citizen of the State of ~~Illinois~~, humbly complaining, respectfully represents unto your Honors: That your Orator on or before the year 1903 was the owner of ~~$2,400,000~~ of the stock of the Corn Products Company of New Jersey and ever since has been and still is the owner and holder of a half million dollars of the same and that the value of said stock then exceeded ~~$2,000,000~~.

1. That the Standard Oil Company of New Jersey, and the defendants hereinafter named, constituting and controlling the Directory of the said Corn Products Company, then and ever since have occupied the position of Trustees of your Orator, as to said stock, and while acting as such Trustees they have wrongfully impaired and injured the

before this Honorable Court and the term thereof to be begun and held on the 3rd Monday of ~~October~~, A. D. 1907, in the City of Chicago, in the County of Cook, in the State of Illinois, to then and there answer this Bill of Complaint, as aforesaid, and abide by and perform the orders and decree of this Court in this cause; and your Orator will ever pray, etc.

Solicitor for Complainant.

Term No. 9213 Gen. No. 26356

IN THE

Circuit Court of Cook County

October Term, A. D. 1907.

The Chicago Real Estate Loan and Trust Company, a Corporation,

Complainant,

vs.

The Standard Oil Company of New Jersey et al.

Defendants.

A. B. JOYNER,
Solicitor for Complainant.

(Copy)

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Circuit Court of Cook County

OCTOBER TERM, A. D. 1907.

The Chicago Real Estate Loan and Trust Company, a Corporation,

COMPLAINANT,

vs.

The Standard Oil Company of New Jersey et al.

DEFENDANTS.

BILL OF COMPLAINT.

TO THE JUDGES OF THE SAID CIRCUIT COURT IN CHANCERY SITTING:

Your Orator, the Chicago Real Estate Loan & Trust Company, a corporation, duly organized and existing under the laws of the State of Illinois, a resident and citizen of the State of Illinois, humbly complaining, respectfully represents unto your Honors: That your Orator on or before the year 1903 was the owner of $2,400,000 of the stock of the Corn Products Company of New Jersey and ever since has been and still is the owner and holder of a half million dollars of the same and that the value of said stock then exceeded $2,000,000.

1. That the Standard Oil Company of New Jersey, and the defendants hereinafter named, constituting and controlling the Directory of the said Corn Products Company, then and ever since have occupied the position of Trustees of your Orator, as to said stock, and while acting as such Trustees they have wrongfully impaired and injured the

before this Honorable Court and the term thereof to be begun and held on the 3rd Monday of ~~October,~~ A. D. 1907, in the City of Chicago, in the County of Cook, in the State of Illinois, to then and there answer this Bill of Complaint, as aforesaid, and abide by and perform the orders and decree of this Court in this cause; and your Orator will ever pray, etc.

Solicitor for Complainant.

Placita.

holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the seventh day of October in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States of America, the one hundred and thirty-second

Present:—The Honorable Farlin Q. Ball,
Judge of the Superior Court of Cook County.
John J. Healy, State's Attorney.
Christopher Strassheim, Sheriff of Cook County.

Attest:
CHARLES W. VAIL,
Clerk.

Bill of complaint, filed Oct. 19, 1908.

Be it remembered that heretofore to-wit: on October 19th in the year of our Lord, one thousand nine hundred and seven there was filed in the office of the clerk of the Superior Court of Cook County a certain bill which is in the words and figures as follows to-wit:

397 Term No. 9213 General No. 263565

IN THE SUPERIOR COURT OF COOK COUNTY

November Term, A. D. 1907.

George F. Harding
vs.
The Standard Oil Company of New Jersey *et al.*
Defendants.

A. B. JOYNER,
Solicitor for Complainant.

No. 8.

(Endorsed) Filed Oct 19—11-45 A. M. 1907 Charles W. Vail Clerk

398 State of Illinois, } ss.
County of Cook. }

Bill of complaint filed Oct. 19, 1907.

SUPERIOR COURT OF COOK COUNTY

November Term, A. D. 1907.

George F. Harding
vs.
The Standard Oil Company of New Jersey *et al.*
Defendants.

BILL OF COMPLAINT.

To the Judges of the said Circuit Court in Chancery Sitting:

Your Orator, Geo. F. Harding, a resident and citizen of the State of California, humbly complaining, respectfully represents unto your Honors: That your Orator on or before the year 1904 was the owner of 500 shares of the stock of the Corn Products Company of New Jersey and ever since has been and still is the owner and holder of the same and that the value of said stock exceeded $20,000—

1. That the Standard Oil Company of New Jersey, and the defendants hereinafter named, constituting and controlling the Directory of the said Corn Products Company, then and ever since have occupied the position of Trustees of your Orator, as to said stock, and while acting as such Trustees they have wrongfully impaired and injured the value of all of said stock and are now further injuring and impairing the same by the conspiracy and misconduct hereinafter set out in this bill.

That said Standard Oil Company, and co-defendants, have wrongfully obtained possession by said conspiracy and misconduct of all the property of the Corn Products Company, including thirty-five and one-half factories engaged in the manufacture of glucose, starch and by-products, and that by a combination in the year 1906 the said defendants having also acquired the stock of two and one-half companies and of their factories engaged in the same business, have, while ruining the value of your Orator's stock, created a monopoly in the manufacture and sale of said necessaries of life, contrary

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tion of said factories for the year 1906, were over $6,000,000; and the earnings for 1907 have been at the rate of $600,000 per month and are increasing, and this, too, also appears by the annual and quarterly statements of the defendants for those periods, and your Orator alleges that nothing had occurred in the history of the Corn Products Company up to January 6, 1906, to impair the solid value and the excellent condition of said company.

That the real value of said stock of your Orator would have continued and ought now to be, at the time of filing this bill, the full sum of the par of said shares, and cumulative dividends and interest upon said preferred stock at 7% annually, and also yearly dividends upon said common stock when and as earned out of the profits aforesaid, and which were adequate to the payment of the same from time to time yearly at 4%, had it not been for the misconduct, and the conspiracy, and the illegal act of the said defendants against your Orator hereinafter described.

5. That prior to the 6th of January, 1906, the exact date being unknown to your Orator, C. H. Matthiessen, Norman B. Ream, William W. Heaton, Joy Morton, C. L. Glass, W. J. Calhoun, T. B. Wagner, H. G. Herget, E. F. Wemple, Benjamin Graham, W. H. Nichols, and E. T. Bedford, were and for a long time had been the Officers and Directors of said Corn Products Company, and were the owners and holders of a large part of the stock, chiefly of the Common stock, of said Corn Products Company; that combining and confederating together, and with the Standard Oil Company of New Jersey, and others in the interest of said Standard Oil Company, which had for a long time named said Board of Directors and said officers, entered into an unlawful conspiracy to cheat and defraud your Orator, as the holder of the stock aforesaid, and all other holders and owners of the stock of the Corn Products Company not parties to said conspiracy, and undertook wrongfully to transfer the entire assets and business to a new corporation, the Corn Products Refining Company of New Jersey, to be organized and managed by the Standard Oil Company, and under and in pursuance of the following so-called Plan, which was afterwards wrongfully and unjustly carried into execution to the great wrong and injury of your Orator as hereinafter set forth in this bill.

PLAN.

Plan.

6. "The Corn Products Refining Company will be organized under the laws of New Jersey with a capital of $30,000,000 Preferred and $50,000,000 Common Stock, the same as the Corn Products Company and with the same provisions as to preference.

Mr. E. T. Bedford will take the Presidency of the company and the management of its business, bringing into the Board of Directors those associates who have been actively connected with him in the New York Glucose Company.

When the plan becomes effective the Corn Products Refining Company will own: (1) At least a majority of the capital stock of the Corn Products Company; (2) the entire capital stock of the New York Glucose Company, not already acquired by the Corn Products Company; (3) the entire capital stock of the Warner Sugar Refining Company; (4) the entire capital stock of the St. Louis Syrup & Preserving Company; and the new company, with its subsidiary companies will have a net working capital of approximately $5,000,000.

401 All stock set apart for exchange for stock of the Corn Products Company and not used for that purpose will remain in the treasury.

In effect, the Corn Products stockholders will surrender one-third of their holding for the purpose of acquiring the entire interest in the three companies above named, not already owned by the Corn Products company.

Those three companies have modern works, and no bonded debt except $2,300,000 while the subsidiary companies of the Corn Products Company, have a total bonded debt of $7,293,000.

The three companies, New York Glucose Company, Warner Sugar Refining Company and St. Louis Syrup & Preserving Company, contribute a net working capital of about $2,000,000 toward the joint working capital of $5,000,000.

During the year just ended those three companies did about 5% of the entire business, domestic and export.

The financial status of all companies to be verified by public accountants and titles to be examined by counsel.

Plan. The undersigned stockholders among others have agreed to deposit stock under the foregoing plan.

C. H. MATTHIESSEN,
NORMAN B. REAM,
WILLIAM W. HEATON,
JOY MORTON,
J. B. GREENHUT.

7. Your orator alleges that the printed plan aforesaid was sent, as your Orator is informed and believes, to some of the stockholders of The Corn Products Company at some date unknown to your Orator, but believed to be in the year 1906, and was accompanied by a paper, of which the following is a copy, viz.:

"Title Guarantee and Trust Company,
146 Broadway.

New York, Jan. 6, 1906.

To the Stockholders of The Corn Products Company:

In accordance with the annexed Plan, The Title Guarantee and Trust Company is prepared to receive your stock on deposit and to issue transferrable certificates of deposit therefor, exchangeable for stock of The Corn Products Refining Company, on the basis of three shares of your stock, Common or Preferred, for two shares of the same class of the stock of The Corn Products Refining Company.

Scrip will be issued for fractions of shares, exchangeable for full shares in sums of one hundred dolalrs or multiples thereof.

The right is reserved to declare the Plan inoperative, in which event all stock deposited will be returned without cost to depositor, upon surrender of the certificates of deposit issued therefor, suitably endorsed, on or after March 3, 1906.

The time to deposit stock under the Plan will expire February 1, 1906, at 3 p. m.

The Certificates must be accompanied by power of its transfer in blank, the execution of which must be witnessed or guaranteed by someone known to this Company, or acknowledged before a Notary Public, under his official seal.

C. H. KELSEY,
President.

8. Your Orator alleges and charges that the essence and

effect of this Plan was the enforced liquidation of the Corn Products Company. Bill of complaint. Filed Oct. 19, 1907.

402 That this liquidation was to be accomplished under color and by means of a bargain for the benefit of the Standard Oil Company, and all of said schemes, divisions, and details of said Plan were in effect, merely, for the purpose, on the part of the Standard Oil Company and the parties in its interest, to give to said Standard Oil Company the monopoly of the glucose, starch, and by-products manufactured in the United States as already stated.

That the object of the Standard Oil Company was more easily accomplished by special contracts in advance with the said conspirators by which they were enabled to sell their stock on better terms than stated in said Plan; but there was reserved for your Orator and other stockholders the necessity of uniting in said Plan and consenting to said bargain, with no other alternative, as the Standard Oil Company had assured itself of the entire market for said Corn Products stock; and, if it could be sold at all, it must either be sold on the terms of this Plan or at private sale to the said Standard Oil Company, as elsewhere more fully shown in this bill.

9. Your Orator shows to your Honors that said Plan provided for the formation of the Corn Products Refining Company, capitalized at $80,000,000, and divided said stock between the holders of the $80,000,000 stock of the Corn Products Company so far as issued ($72,500,000), on the basis of two shares of the new company for three of the old, giving 60% of the stock of the new company to the stockholders of the Corn Products Comapny who should accept these terms.

That this division left the remaining 40% of said stock of said company to the holders of the capital stock of the Warner Sugar Refining Company and of the capital stock of the St. Louis Sirup and Preserving Company, and of 51% of the capital stock of the New York Glucose Company.

That as stated in said Plan: "in effect the Corn Products shareholders will surrender one-third of their holdings for the purpose of acquiring the entire interest in teh three companies (last) above named, not already owned by the Corn Products Company."

That said 40% given to the holders of said two and a half factories had then a total value on the New York Stock Exchange of $16,854,569.

10. That the actual value of the said stock of said two and a half companies and their factories did not exceed $3,000,-

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000. That they were then owned by the Standard Oil Company which had then bought the same for less than said sum. That the said 51% of the stock of the New York Glucose Company was absolutely worthless as it had nothing to represent it in value except its factory at Edgewater, New Jersey, that could not be economically used for the manufacture for which it was built; and this is now admitted by said defendant in their first annual statement. That said two and a half companies were capitalized at less than $5,500,000 and were subject to an indebtedness, bonded and floating, of $3,250,000 dollars; that they never had reported dividends or net earnings during their existence, of from five to ten years, and that they had no right to declare such dividends, and had no net earnings, is sufficiently explained by said indebtedness approximately the amount of thei reapital. That the statements of said three companies of January and February, 1906, evidently prepared for the purpose of justifying this division at the time show that at the highest estimate they were then worth less than $8,200,000.

403 That the gross earnings by the Warner and St. Louis factories for the only year for which comparison can be made, due to the suppression by our Trustee of the statement of the Corn Products Company for the year, as reported in 1905, gives gross earnings, Warner, $83,417, St. Louis, $111,932, total $195,349.

The gross earnings of the thirty-five companies of the Corn Products Company for the same period were $2,968,312 (omitting as a neglible quantity the gross earnings of the New York Glucose Company, being the half factory in each case). These gross earnings of the said two companies show that they the said owners should have been given upon the basis of their gross earnings 6% of the stock of the Corn Products Refining Company, instead of what this plan gave viz: 40%, and the management and control thrown in, and assured by the terms of the charter for many years to come.

So far as known said two factories had neither trade marks, patents, good will, nor any fruits to show of successful experience, were loaded with debt, nearly to the amount of their capital, and were burdened with infirmities of their own as to water supply and location.

11. That said Plan and Division gave to said Standard Oil Company, the holders of the said stock of the two and a half companies and their factories, a profit of $15,000,000

outright. That said Division and Plan further provides for the permanent ownership and monopoly in the provision, namley: "Mr. E. T. Bedford will take the presidency of the company and the management of its business, bringing into the Board of Directors those associates who have been actively connected with him in the New York Glucose Company." That said Bedford, and his associates, of the New York Glucose Company, were simply Directors and Officers and Agents of the Standard Oil Company, and said Bedford and others of said associates were also openly Trustees of your Orator and the stockholders of said Corn Products Company, so that this Plan was simply a gift and bargain by which our Directors and Trustees sold said $80,000,000 of Corn Products stock to themselves.

12. That by this Plan, according to the valuation given the 40% of the stock of the Corn Products Refining Company, (which was paid for by said two and a half factories worth $8,200,000, at the very highest price named by themselves) then the 60% of the capital which remained was to be treated as only worth $12,000,000; and this proportionate sum of $12,000,000 was a fair and adequate division according to the equity of said Plan as administered by our Trustees to the holders of the $80,000,000 of Corn Products stock; and this was so just a Division and Plan, that it was certified to by the remaining Trustees and leading stockholders, who agreed to it in advance as shown by the following statement annexed to said Plan, namely: "The undersigned stockholders, among others, have agreed to deposit stock under the foregoing Plan.

C. H. Matthiessen,
Norman B. Ream,
William W. Heaton,
Joy Morton,
J. B. Greenhut."

That this was a certficate by a part of our Trustees and a part of the Directors of the Corn Products Company to their cestiuis que trust, that it was a fair division, and an honest Plan, namely: That they should give up a third of their capital and surrender their right to the conduct of their own business to the Standard Oil Company, that they should besides pay $17,000,000 for two and a half factories, one of them worthless, and the other two picked up by the Standard Oil Company at less than $2,000,000, and all incumbered for more than their value—that this fixing a

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valuation of $12,000,000 for the $80,000,000 capital of the Corn Products stock (in proportion to said $8,000,000 valuation of the said two and a half factories) was a fair one and should have the consent of every stockholder—urging that all their fellow stockholders should hasten to accept these terms (for their 35½ factories, for their trade secrets, good will, long experience, market and independence, and control of their own affairs, always successful, and about to be more prosperous than ever), giving three shares of their stock, for two shares of stock in the Corn Products Refining Company, which stock at its highest value, proved worth in the market of 1906, less than $27,000,000—an immediate loss of $20,000,000—which has now become $30,000,000, as elsewhere shown in the bill.

13. Your Orator further shows unto your Honors, that while it may not be further necessary to show that this Plan is most inequitable—that our trustees and the Standard Oil Co. should have given themselves the benefit of a bargain both sides of which they made themselves, yet it may be wise to show what was the actual character and value of the assets represented by the $80,000,000 of Corn Products Stock, sacrificed by this plan; and your orator therefore alleges the following facts, namely:

That in January, 1906, the Corn Products Company owned stock of thirty-five and one-half companies and their factories as follows:

I.

Six factories formerly owned and operated by the Glucose Sugar Refining Company of New Jersey.

(1.) The Chicago Sugar Refinery, which had actually cost and was worth more than $8,000,000, with its valuable site on Taylor street and Chicago River, which was, and is, worth site alone $3,000,000;

The legal description of the said property now held and operated in the name of the said Corn Products Manufacturing Company, in the City of Chicago, in the County of Cook, in the State of Illinois, as above shown, is as follows, namely: Block Seventy-eight (78) (except Taylor street) in School Addition to Chicago, in Section Sixteen (16), Township, Thirty-nine (39) North, Range Fourteen (14) East of

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the Third Principal Meridian, in the City and County and State aforesaid.

(2) The factory of the American Glucose Company of Peoria, Illinois, then equal in value as a factory to that of Chicago; and both factories were unrivaled in capacity and excellence of products.

(3.) The factory of the Davenport Sugar Refining Company, of Davenport, Iowa, very favorably situated, for the manufacture of Glucose, sirup, and by-products, and of great value, exceeding $2,000,000.

(4.) The factory of the Peoria Grape Sugar Company in Peoria, Illinois.

(5.) The factory of the Rockford Sugar Works, of Rockford, Illinois.

(6.) The factory of the Firminich Manufacturing Company, of Marshalltown, Iowa. That the said last three 405 factories had cost more than $1,500,000 each and had a grinding capacity of 30,000 bushels daily.

14. That all of said six factories, with a working capital of $1,500,000 had belonged to the Glucose Sugar Refining Company, incorporated August 7, 1897, with a capital stock of $14,000,000, 7% cumulative Preferred, and $26,000,000 Common stock; that the Corn Products Company was organized on February 28, 1902, and then acquired nearly all the capital stock of the said Glucose Sugar Refining Company, in exchange for shares of the Corn Products Company, paying for said capital stock to the extent of $13,000,000 of the Glucose Preferred stock and of Twenty-one millions and a quarter of Glucose Common stock, by $16,081,750 of Corn Products Preferred stock, and $26,600,000 of Corn Products Common stock, holding in reserve $1,000,000 of Corn Products Preferred, and $3,500,000 of Common to acquire outstanding Glucose shares, nearly all of which were later exchanged for the said Corn Products Company's stock; the Corn Products Company paying in said exchange One and a quarter stares of their stock for each share of Glucose Sugar stock; in short paying fifty millions of the capital stock of the Corn Products Company for $40,000,000 of the capital stock of said Glucose Sugar Refining Company.

15. The Glucose Sugar Refining Company owning only six factories and surplus and working capital, had no bonded debt, and had earned and paid dividends to the amount of $6,763,000 from the earnings of said six factories, (7% upon

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the Preferred ever since said company was organized in August, 1897, and 6% on the Common, commencing December 1, 1898, up to December, 1901, when the yearly rate was reduced to 4%); that until these six factories became the property of the Corn Products Company in February, 1902, the Glucose Sugar Refining Company expended $2,152,000 upon said factories, and the average net earnings of the same for the three prior fiscal years were annually $2,969,624, or 8% on the total capitalization of $40,000,000; and these are the facts as given in the annual statements of the said defendant, said Glucose Sugar Refining Company, now known as the Corn Products Manufacturing Company. That the value of the said six factories with said million and a half of working capital, and a surplus of $2,632,985, was then equal to the value of the stock of the Corn Products Company as given in said exchange on February 28, 1902; and that value at the time of said exchange wos 95c on the dollar for the Preferred and 38⅜c on the dollar for the Common stock upon the New York Stock Exchange; and said Glucose Sugar Refining Company was not only enjoying a highly prosperous business, but was in all respects in a very strong condition.

That the total actual value in cash of the said six factories alone in February, 1902, was more than $27,000,000; and your orator alleges that said six factories as a whole were never afterwards of less value, but were of this value or more at the time of said Plan, and their seizure by the Corn Products Refining Company in 1906.

II.

16. Your Orator further shows that the Corn Products Company at its formation, on February 28, 1902, in addition to the six factories aforesaid, acquired 29½ additional factories, with the stock and good will of the companies owning the same, and also with ample working capital as follows, namely: 4½ of said factories engaged in manufacturing glucose were bought by acquiring the stock of the Charles
406 Pope Glucose Company, with its two factories at Geneva and Venice, Illinois; and the factory at Pekin, Illinois, was acquired with the stock of the Illinois Sugar Refining Company; and 49% of the stock of the New York Glucose

Company with the same per cent. of its factory at Edgewater, New Jersey. Bill of complaint, filed Oct. 19, 1907.

17. And said company also acquired the stock of the United States Glucose Company; which last named stock with its glucose factory and the remaining 24 factories of the 35½ factories aforesaid, which were starch factories, were acquired by the purchase then made of the entire stock of the National Starch Company; by which they were up to February 28, 1902, owned.

18. That the Corn Products Company acquired by exchanges of its own capital stock, amounting to $80,000,000, practically all the said stocks, and with them the factories of said companies; and paid therefor by apportioning the shares of the Corn Products stock as follows: (1.) It paid $46,082,050 of Common and Preferred Stock as above stated for said Glucose Sugar Refining Company stock of $40,000,000 with its six factories aforesaid. (2.) That it paid $7,125,240 Preferred stock and $15,539,565 Common stock for said 49% of the New York Glucose Company stock amounting to $1,225,000; and for $750,000 of the shares of the Illinois Sugar Company with its factory at Pekin; and for $120,000 shares of the Charles Pope Company stock with its two factories at Geneva and Venice; and the Corn Products Company also acquired in consideration of the stock given for said three and a half factories last named, $1,400,000 in cash for additional working capital; the sum paid in cash by said Corn Products Company at the then value of its stock so paid, was $12,673,012.

19. That the sums paid for the factories at Geneva and Venice and Pekin were the sums upon which dividends had always been paid; and the factory at Pekin is that claimed by the Corn Products Refining Company, defendant, in its statement of 1907, as that in the best location for a glucose plant and also as being extended in grinding capacity for that reason. That in the purchase for the stock and factories, twenty-five in number, of the National Starch Company, there was apportioned, and paid for them $3,469,000 Preferred stock, and $2,201,220 Common stock; making the sums paid in cash as ascertained by the value of the Corn Products shares on the New York Stock Exchange at the time, namely, $4,132,212.

20. That said National Starch Company had a capital stock of $10,000,000, of which half was Preferred stock upon

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the Standard Oil Company, and entirely in their interests, and the factories are in possession and under control of the Standard Oil Company, every one of the thirty-eight factories charged in said plan, being so managed as the property, and in the name of the Corn Products Manufacturing Company, and conducted under orders from the Standard Oil Company through said Corn Products Refining Company; and that each one of the factories is managed from the office of the Standard Oil Company at 26 Broadway, New York; and the manufacture and sale is conducted without any consideration for the real interests of your Orator, and the stockholders of said Corn Products Company, but solely for the benefit of the Standard Oil Company, yet the said Standard Oil Company ingeniously keeps on foot through its agents and subsidiary companies the pretense of management and control through the Directors of the Corn Products Company aforesaid, who are simply agents of the Standard Oil Company.

That the very name of the Corn Products Company does not longer appear in the market, is unknown in the production and manufacture of glucose and by-products; and for purposes of concealment and to defeat all publicity or knowledge of what has occurred, the very brands, trade marks, good will of the Corn Products Company, and every detail of its manufacture and sale is now done in the names of said companies, scarcely distinguishable from that of the Corn Products Company; that the factories are run in the name of the Corn Products Manufacturing Company, and the business is done in the name of the Corn Products Refining Company; that the Corn Products Company has no office or telephone, and its stockholders are denied all information of its business; and every attempt is made to blot out the name and connection of the Corn Products Company with the said business and manufacture in which it was so successful, and on the eve of its greatest success, and of its brightest future; and the money earned by the 35½ factories of the Corn Products Company amounting annually to $7,000,000 a year, are now pouring into the hands of the Standard Oil Company, at 26 Broadway, New York.

25. Your Orator alleges, that the Standard Oil Company was really the Trustee of your Orator, and managed the business and property of your Orator and fellow stockholders during the entire history of said Corn Products Company, and

up to and ever since the said conspiracy charged in this bill; that said Standard Oil Company and their co-defendants have been in said position of trust and are now in said position of trust, for your Orator and other stockholders in like condition, and should be made to account for the profits they have made in said business of said Trust, and should be compelled to surrender it through the appointment by this court of a receiver.

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Your Orator alleges that the Standard Oil Company began its campaign and conspiracy to create this monopoly in the manufacture and sale of starch and glucose, in 1898, by the formation of the New York Glucose Company of New
409 Jersey, and the construction of its factory at Edgewater, Bergen Point, New Jersey. That in 1898, had been recently formed the Glucose Sugar Refining Company of New Jersey, which with its six factories in Illinois controlled the manufacture and market of said products; and the factory at Edgewater, New Jersey, was intended to secure the monopoly of said manufacture and markets for the Standard Oil Company; that finding its first move in building its factory was abortive, because it was built outside the corn belt and could not be used to manufacture economically, the said Standard Oil Company joined in a wider combination and assisted in forming the Corn Products Company of New Jersey, and managed to have apportioned to it in said formation one-fifth or thereabouts of the Corn Products Company's $80,000,000 of stock, but said Standard Oil Company only put into said Corn Products Company 49% of the stock of the New York Glucose Company, reserving the control, the better to accomplish its purposes; that the fellow stockholders of the Corn Products Company, including the stock of thirty-five companies engaged in the same manufacture, very soon found themselves in the control of the Standard Oil Company; especially because the Standard Oil Company by the formation of the Corn Products Company had gained access to the patents, trade secrets, and everything that gave it the business success; and still more because the Standard Oil Company were thereby enabled to name the Directors of the Corn Products Company, and placed in said Directory one of its ablest Directors, E. T. Bedford, who dominated the Company and continued its Director with other associates, really Directors of the Standard Oil Co., itself or its agents, thereafter. That the manufacture and market of the Corn Products Company was from its formation controlled by the Standard Oil Com-

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pany, though without the knowledge of its stockholders to the real extent of such control, until later developed by the sequel when the said Bedford, and his associates, in the New York Glucose Company presented and since have enforced up to this hour the said Plan hereinbefore stated and shown.

26. That there were outside the Corn Products Company the factory of the Warner Sugar Refining Company at Waukegan, Ill., and another factory of the St. Louis Sirup and Preserving Company, at Granite, Ill., besides other factories in the Corn belt engaged in the manufacture of Starch or glucose, and the Standard Oil Company found it necessary to complete its monopoly to buy up the said two factories to make its monopoly mre effectual. That in order to buy and control the stock of the Corn Products Company required a further investment of but one or two million of dollars, but this was effected through the agency of the New York Stock Exchange, upon which said Standard Oil Company caused the stock of the Corn Products Company to be listed, and by the devices familiar to said company of fictitious sales and purchases from and to themselves of the stock of the Corn Products Company, said Standard Oil Company easily and profitably raised and lowered the stock of the said Corn Products Company; so that at one time it was worth one hundred cents and at another time ten cents or less, judging of its value by the index furnished by the sale so manufactured on the New York Stock Exchange; that these fictitious sales and purchases were begun in 1902, and were continued during the life time of the Corn Products Company by said Standard Oil Company, and were aided by actual statements of the said Corn Products Company required by law annually, which, and rumors of the same nature, furnished alleged facts, so much to the prejudice of the Corn Products Company, half truths, and other falsehoods, that aided the Standard
410 Oil Company in its cempaign upon the New York Stock Exchange; so that finally after the conduct of said campaign during 1903, 1904 and 1905, these false sales and purchases, led to sales of real stock to said Standard Oil Company, at prices named by the Standard Oil Company. That the campaign of the Standard Oil Company was in point of fact financed from the inside of the Corn Products Company, and so it is, that said Standard Oil Company, absolutely controlled, and controls, the majority of the stock of the Corn Products Company. That by the device of the Corn Products Refinng Company of New Jersey and the bargains shown in the

Plan already detailed, said Standard Oil Company in effect have been given them $15,000,000 at least for the pretended consideration of said two factories at Waukegan and St. Louis and of said 51% of said New York Glucose Company, and have placed the new company permanently in the hands of themselves and their Directors. That said Standard Oil Company has thus by easy stages and at slight cost, if any, but through the ruin of the said stockholders of the companies owning the said thirty-eight factories, obtained the entire business of the manufacture and sale of glucose and starch products in the United States. Bill of complaint, filed Oct. 19, 1907.

27. Your Orator further alleges that the said Plan is especially inequitable as against your Orator and other Preferred stockholders of the said Corn Products Company. That they are invited by this Plan to give up one-third of their Preferred stock to the amount of $10,000,000, and its 7% yearly dividends. That the surplus then existing in 1905, was abundantly sufficient to pay such dividends as so contracted to be paid. That said Plan requires a surrender of their stock, ignoring entirely such interest at 7% due them; and the owners of said stock have ever since under this Plan and management and control and monopoly, suffered the loss of said interest and will continue to suffer that loss until the property is taken out of the hands of said defendants.

Your Orator alleges that the contract under which your Orator and other stockholders held their stock and stated in the charter of said Corn Products Company, and repeated in the Certificate of the Preferred and the Common stock aforesaid, issued to your Orator, or held and owned by him, is as follows, namely:

"The holders of the preferred stock shall be entitled to receive when and as declared from the surplus or net profits of the company yearly dividends at the rate of 7% per annum and no more, payable quarterly on dates to be fixed by the by-laws. The dividend on the preferred stock shall be cumulative and shall be payable before any dividends on the common stock shall be paid or set apart so that if in any year dividends amounting to 7% shall not have been paid thereon the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock."

"Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable and the accrued quarterly installments for the

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current year shall have been declared and the company
411 shall have paid such cululative dividends for previous years and such accrued quarterly installments or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock payable then or thereafter out of any remaining surplus or net profit * * *

"In the event of any liquidation or dissolution or winding up, whether voluntary or involuntary, of the company, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock."

28. Your Orator alleges, that these provisions in the contract of the Preferred stock, as above stated held by him, were and are a part of the contract and contracts with him as to each amount and all amounts of the said shares of Preferred stock held by him, and were in full force and binding upon the said Corn Products Company and all other persons dealing with said Corn Products Company at all times during its history and are still in force and have never been set aside or destroyed by any action or consent upon the part of your Orator, but your Orator alleges and shows unto your Honors, that by said action of said Trustees, the defendants herein, in the attempted execution of said Plan, all the said property of the Corn Products Company have been taken out of its hands, wrongfully and without right, and that its factories and all its business, and its market, goodwill, trade secrets and patents, and licenses, necessary to the conduct of business, are now wrongfully in the possession, management, and control, of the Standard Oil Company, and others of said defendants, and the said Corn Products Company and the rights and interests of your Orator, have been annihilated, by and under the execution of said Plan and in pursuance thereof.

29. Your Orator further shows unto your Honors, that said Plan effects the preservation of a part of the common stock of the Corn Products Company and thereby secures to the conspirators the consequent control of both the Corn Products Company and the Corn Products Refining Company accomplished by the defeat and confiscation of the Preferred stock and of its preference; for it is claimed by said defendants that it was wise with due regard to the interest of all parties to cut down the Preferred stock and thereby take away $10,000,000 of the money put into it, yet at the same

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time it is also pretended and the Plan secures to the holders of the Common stock a value capitalized at $33,444,000 in the capital stock of the Corn Products Refining Company; and it is now, as the sequel shows, pretends that a dividend can be shortly made on this very common stock of the Refining Company.

So that your Orator respectfully shows unto your Honors, that this common stock secures the control of the Corn Products Company and of the Corn Products Refining Company and can be manipulated into this immense sum; although said common stock was not entitled to a penny under the terms of said charter of the Corn Products Company until all of said Preferred stock, including the $10,000,000 of the Preferred stock cut off by said Plan had first been paid in full and 412 until all unpaid cumulative dividends and interest thereon were also paid to the last dollar.

That it is the truth and your Orator charges that this Plan was made to effect the common objects of said conspirators, namely: (1) To secure to the Standard Oil Company the $17,000,000 given by said division in behalf of the factories held by it, and (2nd) to give value to the Common stock of the Corn Products Company which had been theretofore bought up by the Standard Oil Company and its said associate defendants in said conspiracy, and (3rd) the creation of the said monopoly of the manufacture and sale of glucose, starch and by-products. That as elsewhere stated in this bill the Standard Oil Company by the manipulation of the market, by the sale of the stock of the Corn Products Company on the New York Stock Exchange for years, without reference or regard to the real value of the stock and by fictitious sales of stock, that never were made or delivered, reduced said stock to nearly a tenth of its value. That a majority of the stock of the Corn Products Co. being acquired by this monstrous series of operations backed by the irresistible wealth and influence of the Standard Oil Company, and with entire indifference to the interests of other stockholders, the said Standard Oil Company was able at its pleasure, and at a price fixed by themselves, to acquire from their worn-out stockholders when compelled to sell, and to now control, the greater part of the $80,000,000 of actual capital and money of the Corn Products Company, and are now managing the business of all the property which they have acquired substantially for nothing, financed by itself and at the sacrifice of many indi-

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vidual stockholders, including your Orator, as elsewhere stated in this bill.

30. That your Orator had the right, specially contracted to stockholders of the same class, Preferred and Common, to have the $80,000,000 of assets of the Corn Products Company given to said stockholders in the order fixed by their respective contracts, and cannot be ousted of the same by and in behalf of their Trustees.

That the Preferred stock must be paid and after that the Common stock had a right to be paid out of the assets of the Corn Products Company; and that said stockholders had a right to refuse the bargain and substitute presented to them by their Trustees by this Plan. That the assets of the Corn Products Company were sufficient many times over to pay the Preferred stock without the surrender of a dollar of it. That what remained of the assets of the Corn Products Company was sufficient to pay the stock of the Common shareholders of said company, and it was a criminal act to compel said stockholders to have their properties destroyed and their independent right to control annihilated by this Plan, and the creation of this monopoly was an unjust and unlawful change of their condition.

31. Your Orator alleges that if the assets of the Corn Products Company were distributed in a Court of Equity such court would have distributed to the Preferred stockholders full payment at par of their stock, instead of the liquidation under this Plan by which the Preferred stockholders must surrender one-third of their stock, including back dividends and interest, in order to give place to the common stock which is left a large residuum; that the assets of said Corn Products Company were ample to effect such distribution in a court of equity and that the effect of this Plan not only causes this injustice, but to this must be added the fact

that he price on the New York Stock Exchange of Pre-
41$2\frac{1}{2}$ ferred stock of the Corn Products Refining Company

if accepted as an index if its value, shows that this Plan compels a sale of the Preferred stock of the Corn Products Company or its exchange for the Preferred stock of the Corn Products Refining Company, worth less than 42 cents on the dollar, and this sacrifice is coupled with the assurance that the Corn Products Refining Company must manage the 35 factories under the control of the Standard Oil Company engaged in the misconduct and criminal violations of law fo

which the National government is demanding its punishment.

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32. Your Orator further shows unto your Honors, that the facts herein alleged in regard to the action of the defendants in this conspiracy aforesaid remained unknown to your Orator until within a short time, a few months at best, when they were learned little by little, information being denied and withheld by his said trustees, as were the said defendants; and he charges that no notice was given to your Orator by defendants of any of their action or proposed action aforesaid, as set out in this bill, and what knowledge your Orator has obtained was gathered from time to time, and only after having been first concealed from him, and only learned with difficulty; one of the acts of concealment showing the secret manner in which they were done, namely was that the very name of the Corn Products Company was counterfeited and concealed by the name given to the Corn Products Refining Company and of the Corn Products Manufacturing Company, and their actual existence and relations were concealed. That these devices of said conspirators were meant to conceal, confuse and deceive your orator and other stockholders not in the said conspiracy; and your Orator alleges that had the truth been known to him he would have filed a bill in apt time to prevent the execution of said Plan and the consummation of said conspiracy. That your Orator alleges that he has been unable to learn or state more fully than as herein set forth how the designs of the said conspirators were effected and with what action, if any, of record, in any book or books, showing the conduct and action of the directors of the Corn Products Company, or of the Corn Products Refining Company (if they were so preceded, accompanied or followed), nor whether a merger was attempted, or if so, how made, under the color of the law, or laws, of New Jersey, or what will be so claimed by said defendants in that regard; but your Orator shows unto your Honors and charges, that whatever was done by said defendants for said end or object, whether by merger or otherwise, in said conspiracy, was wrongful, fraudulent, and grossly inequitable as against your Orator; and that said Plan, the formation and apportionment of said Corn Products Refining Company, were unequal, unjust and inequitable, as elsewhere more fully shown.

33. Your Orator further shows unto your Honors that the Standard Oil Company and its Directors, including the Directors of the New York Glucose Company, and the Directors

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stockholders and your orator are only referred upon such application for information to men who are abroad, to men who cannot be found, or to men who profess to know nothing, and who will reveal or state nothing which will enable your orator to learn what has occurred, except the bare facts that the Corn Products Company has disappeared and as stated elsewhere in this bill.

36. Your Orator further alleges that the statements put forth by defendants touching the thirty-eight factories, their market, their products, their condition, their business done are all misleading and substantially untrue and meant to deceive, and the market is so manipulated and the production so manipulated as to magnify the value of the said two and a half factories and to minimize and depreciate the value of the said thirty-five and one-half factories with a view to conceal the truth; and the Standard Oil Co. stands ready, your Orator charges, with its Protean charges to delay and defeat justice in the premises; so that there is no other remedy for your Orator to recover a part of what has been taken from him than the appointment of a Receiver and the recovery of the assets of the Corn Products Company from the hands of its enemies, who are also the enemies of the American people and have established one of the worst and most dangerous monopolies in the necessaries of life and have placed thereby a burden upon the back of every man in the nation.

37. That the result as to the public, of this transaction is that all competition has been destroyed; and the Corn Products Refining Company is fully in possession of the manufacture of glucose and by-products; and an absolute monopoly is thereby created, and all competition is destroyed. That the new company being now able to fix a price to the public at its pleasure, have already advanced the price of glucose so that the price which was in July, 1905, 15 cents a gallon was advanced to 24 cents per gallon in July, 1906, and the public will be compelled to pay whatever the said Bedford and his Standard Oil friends choose to demand, and this is not a beneficial monopoly.

38. At the time your orator purchased said stock, as aforesaid, and for a long time prior thereto, and for a considerable period thereafter, the capital stock of the said Corn Products Company was duly listed upon the stock exchanges of New York, and Chicago, and other large cities, and was daily bought and sold, in open market, as one of the standard investments of the country, the market value thereof being

as above stated, and the same was based upon the ownership of the properties above described, and other valuable properties and the profitable manufacturing business to the carrying on of which all the said properties were devoted by the parties aforesaid, for the benefit of the said Corn Products Company, and its stockholders, including your Orator, as aforesaid; and, in reliance upon the said facts, your orator acquired the said stock with a view of holding the same as an investment, and your Orator has ever since held, and still holds the same to the extent stated already in this bill for such purpose, and at the time your Orator so acquired the same, and afterwards, the said Corn Products Company, was paying regularly dividends to the holders of the said stock, including your Orator, on the par value of said stock, from the profits of the said business so controlled by the said Corn Products Company and so conducted and managed for the benefit of the said Corn Products Company, and its stockholders, including your orator; and it was the duty of the said Corn Products Company, and its officers and directors, to continue to so manage its affairs, including the said properties and business above mentioned through its control thereof, as aforesaid, that such dividends upon its stock should and would continue from year to year, and your Orator avers that if the said Corn Products Company, and its Officers and directors, had, honestly and in good faith, continued its said business, and the management thereof, the said stock of your Orator, together with the stock of other stockholders in said Corn Products Company, not parties to said conspiracy, would still be earning and paying such dividends, and now be worth one hundred ($100) dollars per share; but, instead of that now being the case, your Orator avers that by reason of the bad faith, and misconduct, of the officers and directors of the said Corn Products Company, and others, pursuant to and as a part of the said conspiracy, the entire stock of the said Corn Products Company has, by reason of the said conspiracy and the said wrongful conduct, pursuant thereto, ceased to be a listed stock, and ceased to pay or earn dividends, and its value has thus been entirely destroyed, the said conspirators having fraudulently caused the same to be dropped from the list of the said stock exchanges, and have fraudulently stopped the payment of dividends thereon pursuant to said conspiracy, and are now managing all of the said properties in the exclusive interest of said conspirators, and in total disregard of the rights of your Orator as the owner and holder

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of the said stock, and in total disregard of all the rights of the holders and owners of the stock of the said Corn Products Company, other than said conspirators.

39. Your Orator further represents that, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, said conspirators are now planning and arranging to cause all of the said properties and the said business to be transferred and conveyed to the said Corn Products Refining Company, or to the aforesaid defendants or others, and thus permanently destroy the value of your Orator's said stock and the value of the other stock of the said Corn Products Company held or owned by persons or parties other than said conspirators, and your Orator brings this Bill of Complaint not only for the benefit of your Orator, but also for the benefit of the halders and owners of the stock of the said Corn Products Company, in the same situation as your Orator, and said other holders and owners of the said stock are hereby invited to come in as co-complainants with your Orator in this Bill of Complaint, and to share in the benefits of whatever relief may be obtained under or by virtue of this suit, upon contribution of their pro rata share of the expenses thereof.

40. Your Orator is informed and believes, and so charges the fact to be, that the said stock of said thirty-five and one-half companies and factories, and with the other properties and assets of the Corn Products Company, are now about to be transferred and conveyed to the said Corn Products Refining Company, or other parties, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, and will be so transferred and conveyed unless the said conspirators, hereinafter made defendants to this Bill of Complaint, be restrained from so doing, or causing the same to be done,
416 by the order of this court, thereby working irreparable injury to your orator, and to the other stockholders of the said Corn Products Company, not parties to said conspiracy.

41. Your Orator further represents that the officers of said Corn Products Company are as follows, namely: J. A. Moffett, President, W. J. Mathiessen, Vice President, and F. T. Fisher, Treasurer; and the Directors of said Corn Products Company are as follows, namely: C. L. Glass, W. J. Calhoun, W. H. Nichols, Joy Morton, W. J. Matthiessen, F. Q. Barstow, J. A. Moffett, F. T. Bedford, T. B. Wagner, W. W. Heaton, F. T. Fisher and William C. Sherwood; and your Orator is informed and believes and so charges the fact to

be that all the officers and directors of the said Corn Products Company are either parties to the said conspiracy or so interested with said conspirators that none of them will take any steps to prevent the carrying out of the said conspiracy for the fraudulent purposes aforesaid; that they are really acting as nominal directors of an automaton without any initiative and absolutely subject to the control and orders of the Standard Oil Company of New Jersey in which many of them are Directors and Officers or clerks and agents or attorneys, as elsewhere stated; and said Corn Products Company is really serving its enemies and in a state of suspended animation, as elsewhere stated in this bill. Bill of complaint filed Oct. 19, 1907.

42. Your Orator further represents that the said Corn Products Refining Company is a giant pool, and trust, and combine, formed by said conspirators for the purpose of unlawfully regulating and fixing and controlling the price of glucose and grape sugar, and other products, all of which are articles of merchandise and commodities manufactured and sold in this state, and through the United States; that the names of the persons forming such pool, trust, and combine, other than these hereinbefore mentioned, are now unknown to your orator, and your orator has nt been able, after diligent inquiry, to ascertain the same, but your Orator is informed and believes, and so charges, that all the persons above named, including the said officers and directors of the said Corn Products Company, are parties thereto, or interested therein, together with others unknown to your Orator: that said pool, trust and combine is to be accomplished, and carried out, and made effectual for the purposes aforesaid, under the forms of the law, namely: in and through such corporation under the name of the said Corn Products Refining Company; that the parties organinzing, creating, promoting and managing or interested in the said pool, trust and combine, are now perfecting their arrangements, with the intent and purpose of unlawfully monopolizing, controlling, regulating and fixing the price of glucose and grape sugar and by-products within the State of Illinois, and throughout the United States, and for such fraudulent and unlawful purpose, as well as for the further purpose of defrauding your Orator or your Orator's said stock and defrauding other holders of the stock of said Corn Products Company similarly situated with your Orator, have already arranged to obtain control of substantially all the corporations and individuals heretofore engaged in the manufacture and sale of said com-

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modities throughout the United States, and the said Corn Prducts Refininfi Company will, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, unlawfully acquire and now hold complete control of the said corporations and individuals, and of the manufacture and sale of the said products; throughout the United States, unless restrained from so doing by the order or decree of this Honorable Court;

that the purpose and intent of the said pool and com-
417 bination, and of the said parties forming the same, or interested therein, jointly and severally, and especially of the Standard Oil Company, is to create a trust in, and a complete monopoly of, the said articles and commodities, and give to the Corn Products Refining Company, as the representative and embodiment of such trust, and pool, and combine, the power to regulate and fix, and absolutely control both the supply and the price of said articles and commodities, in the state of Illinois, and throughout the United States, amounting now in the aggregate to several billions of pounds annually and consuming many millions of bushels of corn, annually; that said pool and trust and combine, and the effect, intent and purpose thereof, and the intent and purpose of the parties forming the same, or interested therein, as aforesaid, is in direct violation of the laws of this state, and inviolation of the statutes of this state in and for such case made and provided, and for the purpose and plan of the said pool, trust and combine, and of said parties forming the same, or interested therein, is to swallow up and merge in the said Corn Products Refining Company, all the organizations and plants in the United States, heretofore engaged or used in the manufacture or sale of said articles and commodities, or any of them, issuing to the said organizations heretofore so engaged stock in the said Corn Products Refining Company to hereby perfect its control of said organization, and, where this method fails, to buy such organizations and plants for cash or its equivalent, and, in any event, to thus merge and swallow up all of the said organizations and plants, including the said Corn Products Company, in said pool, trust and combine, thus leaving to your Orator, and other stockholders similarly situated, the option only of participating in such unlawful trust, pool and combine, or submitting to the destruction of the stock so held by your Orator, and others similarly situated in said Corn Products Company, or the destruction of the value thereof, and your Orator charges that the officers and directors, and majority stock-

holders of the said corporations, defendants herein named, are actively, and knowingly, and unlawfully, aiding and participating and joining in, said trust, pool and combine, and preparing fraudulently and unlawfully to sell and transfer all the said plants and properties of the said Corn Products Company to the said Standard Oil Company or to the said Corn Products Refining Company representing said Standard Oil Company, for the unlawful and fraudulent purposes aforesaid, and will so do unless restrained therefrom by the order or decree of this Honorable Court. Bill of complaint filed Oct. 19, 1907.

43. Your Orator further charges that the forming and carrying out of the said pool, trust and combine, in and by the formation and action of the said Corn Products Refining Company, pursuant to said conspiracy, is an unlawful and fraudulent stock-jobbing scheme, and frenzied finance, upon the part of the said conspirators, for the purpose of fleecing the public, as well as your Orator, and others similarly situated, in the devious ways and methods originating in Wall street, and practiced by financial pirates, constituting "the system" by which the public are fleeced and plundered, continually, and by which it is intended by said conspirators to freeze out and defraud your Orator, as the holder and owner of the said stock in the said Corn Products Company, and other holders of such stock, not parties to such conspiracy, all of which is contrary to equity and good conscience and in violation of the Common law and laws of this state.

44. Your Orator further represents that a part and parcel of the plan of said conspirators, in carrying out the said conspiracy, is to dismantle and destroy such of said plants
418 as are now yielding profits aplicable to the payment of dividends on the said stock belonging to your Orator, and others similarly situated, and build up and operate other plants for the manufacture and sale of said products, from the earnings of which dividends will be paid to said conspirators, exclusively, and not to your Orator, or others similarly situated, all of which is pursuant to said conspiracy, and for the frudulent purposes aforesaid, there being now no ocasion for the sale or transfer of any of the plants, controlled, aforesaid, heretofore, by said Corn Products Company, and from the net earnings of which plants dividends have heretofore been paid, and ought to continue to be paid to the holders of the stock of said Corn Products Company including your Orator, and there is now no occasion or excuse for the dismantling or abandonment, or destruction, of

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any of the said plants, but it is to the interest of the public, and to the interest of your Orator, and other stockholders of the said Corn Products Company, that all of the said plants continue a separate existence and business, and carry on the same, without becoming merged and swallowed up in the said Corn Products Refining Company constituting the said pool, trust and combine, as aforesaid, for the manufacture of said products has already become profitable, and is becoming more profitable every year, and all that prevents such profitable conduct of said business, for the benefit of your Orator, and other interested therein, is the fraudulent conspiracy, aforesaid, and the said unlawful action and conduct of the parties thereto, pursuant to the conspiracy aforesaid, and to the end that such fraud may be prevented, your Orator is advised and believes, and so charges, that a receiver should be appointed by this Honorable Court of the said Corn Products Company, and its property, and, particularly, of the said plants thirty-five and one-half lately owned and held in the name of and operated by the said Corn Products Company, in Chicago, Illinois, and in Peoria, Illinois, and elsewhere, and that said plants be managed and operated by said receiver, under the orders and directions of this Honorable Court, pending the hearing of this cause, and the said conspirators thereby ousted from the possession or control thereof, and a reorganization had of the said Corn Products Company, and of the several corporations heretofore controlled by said Corn Products Company, under the orders and directions of this Honorable Court, and that said conspirators, including said Corn Products Refining Company be enjoined from paying any dividends and from making, or causing to be made, any sale, or transfer, or conveyance, of the said properties, or plants, or any or either of them, or any part thereof, to said Corn Products Refining Company, or any other or others of said conspirators, or to other corporations or persons.

45. Your Orator further represents and charges that all the acts of the said conspirators above named, or referred to, and of said pool and trust and combine, and of the parties forming or interested therein, have been and are with the fraudulent intent and purpose to thereby effect a combination of many millions of dollars of capital, and skill, and firms, and corporations, and individuals, to limit and control the production of glucose, and grape sugar, and other commodities, and regulate, and fix, and control, and change, at the

will of said conspirators, the price of the some, and to prevent competitions in the manufacture and sale of such products, all of which is in violation of the Ssatute of Illinois, entitled: "An Act to Define Trusts and Conspiracies Aagainst Trades," etc., aproved, June 20, 1893, in force July 1, 1893, with the fraudulent intent and purpose on the part of said conspirators to regulate and fix and control the 419 price of said commodities, and the supply thereof, the said articles not being articles of merchandise the cost of which is mainly made up in wages, and no part of the purpose or intent or object of the said conspirators, or the effect of their said action, is not and will not be to maintain or increase wages, and the said fraudulent and unlawful conduct of said conspirators, is in violation of the Statute of this State, providing for the punishment of persons or corporations forming pools, and with the intent and purpose of their part to place the control, of such products in the hands of the said trust, the said Corn Products Refining Company, and thereby control the price and supply and manufacture thereof, in violation of the said Statute of the State of Illinois, and in violation of the common law of the State, and its Statutes in and for such case made and provided.

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46. Your Orator further represents that the glucose business has grown to enormous proportions in this country, and its products are everywhere in use, and of vast commercial importance, in their varied and manifold uses, and in carrying on of such business great skill and vast capital are employed and required, and it is for the interest of the public that competition be unrestrained and uneffected by such pools, and trusts, and combines, as the said Corn Products Refining Company, it not being an easy matter for persons or corporations to go into and engage in such business, as it requires considerable time and much capital to erect plants for the same, and many of the most important processes are patented and owned or controlled heretofore by the said several corporations above named, other than the said Corn Products Refining Company, and it requires skill and experienced men to erect and operate such plant, and the supply of such men is limited, and not equal to the public demand, and it will be impossible to compete with the Standard Oil Company, or its agents or its agent said Corn Products Refining Company in such business, in the State of Illinois, or elsewhere in the United States, unless such conspirators be prevented from carrying out their conspiracy aforesad, and, if such conspir-

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acy be so carried out, your Orator and other similarly situated will be entirely destroyed, and the said pool, trust and combine, would be in complete control of said products throughout the State of Illinois, and throughout the United States, and all competition therein thus prevented.

47. Your Orator further represents that said pool, trust and combine, formed under the name of the said Corn Products Refining Company, cannot succeed in its said fraudulent purposes, unless it secures control of the said plants located in Illinois, and a prevention of its control thereof will prevent the carrying out of the conspiracy aforesaid, as the State of Illinois is the center of the corn belt of the United States, and if free competition be maintained in this State, in the manufacture and sale of such products, the welfare of the entire public will thus be promoted, and the loss of the stock of your Orator, and others similarly situated, in the said Corn Products Company, will be, at the same time, thus prevented, and your Orator charges that whatever may be the form, or forms, adopted and to be adopted, or pursued, by said conspirators, forming or constituting the said Corn Products Refining Company, the substance and effect thereof is, and will remain, a united control of the plants and corporations of this country engaged in the manufacture or sale, of said products, by and in the name of the said Corn Products Refining Company; and the formation and operation of the said Corn Products Refining Company, by said conspirators, is simply a mode of union after the manner of the Standard 420 Oil Company, a part of that gigantic monopoly, and constituting a giant monopoly for the purpose of controlling, fixing, and regulating, both the supply and the price, of glucose, and its varied by-products, syrups and sugar, throughout the State of Illinois, and throughout the United States.

48. Your Orator alleges, that the action and policy of the Standard Oil Company by which they have been enabled to destroy the competition and create monopolies in and control many of the leading products of the country, has been in great part effected by secret and criminal rebates, and other advantages given to said Standard Oil Company by the railroad companies of the United States to the exclusion of independent competition, and to the destruction of the capital engaged in such competition; and your Orator alleges that such secret and criminal contracts and rebates, and other misconduct of the said Standard Oil Company will attend the future control and management of the Corn Products Com-

pany, and of said Corn Products Refining Company and of said Corn Products Manufacturing Company, and of said thirty-five and one-half factories by whatever agents they are managed under the Standard Oil Company and its allies, if not ousted by the order of this court.

49. Your Orator further alleges and shows unto your Honor that said Standard Oil Co. and its agents, individuals, and corporations, the defendants, who have secured the management and control of the property and assets of the Corn Products Co., cannot be trusted with the said management and control, as assured to them by this Plan; yet they are past-masters in the manipulation of market and manufacture to suit their own interests and will destroy and crush the opposition of your Orator and other stockholders who have not surrendered their property under this Plan, by all methods open to corrupt Trustees, and will commit every offense known to predatory corporations of which this defendant, the Standard Oil Company, is easily the first,—offenses against the laws meant to protect the rights of your Orator and of the People of this country against said malefactors, unless prevented by the action of this court. Your Orator shows that said Trustees, the defendants, have already destroyed and junked two or more of said thirty-five and one-half factories and are now engaged in completing the destruction of the factory in Peoria, which was held and regarded as one of the most profitable and successful fkactories engaged in said manufacture and had cost in its construction more than a million dollars—a factory for which the Corn Products Company had paid more than $2,000,000 in 1902, and the Corn Products Manufacturing Company in August, 1897, had paid nearly two million dollars therefor; and your Orator charges that said factory was destroyed in order to give to him and the objecting stockholders an object lessen of the character and determination of the Standard Oil Company and its co-defendants, and of the policy which they woul dmercilessly pursue as Trustees.

50. Your Orator further shows unto your Honors, that the Standard Oil Company through its agent, the Corn Products Refining Company, continues to pay dividends, in favor of itself, and others in its interests; that a dividend of 1% was declared in July, 1907, and a further dividend of 1¼% has just been declared payable in October next—but said dividends were payable upon the Preferred stock of said company, but none to the stockholders of the Corn Products Com-

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pany, owners of the thirty-five and one-half factories,
421 but payable only to the owners of the two and a half factories, which never before are known to have paid dividends to their stockholders, or are known to have shown net earnings as elsewhere more fully stated in this bill; dividends from pretended earnings of the two and a half factories and their companies holding the same, of which the contribution to this Plan was the said indebtedness of over $3,250,000 created in their short experience.

51. Your Orator further shows that out of the earnings for the year ending February 28, 1907, reported at $6,500,000, not a dollar has been divided to your Orator or the other stockholders of the stock of the Corn Products Company objecting to this Plan—but some millions of dollars are left undivided in the Treasury; and this under color of various pretenses hinted at in said report—every one of which your Orator alleges were and are untrue and made to suit the ends of the Standard Oil Company; that the real truth is that your Orator and other objecting stockholders are to be punished in this amongst many other methods, by this master monopoly until driven to consent to their new monopoly, condemned as a crime by the common law and the Statutes of this State.

52. That to further show the inequitable character of the management of our Trustees who owned the two and a half factories, and put them into this Plan at a profit of nearly $15,000,000, and pretend to make dividends out of their earnings while denying dividends to the owners of the thirty-five and one-half factories, your Orator states unto your Honors the following facts, namely: That the grinding capacities of the thirty-five factories of the Corn Products Company are greater than those of the two and a half factories by five fold; that they had all the experience in the manufacture of glucose, starch and by-products, trade secrets and patents, and had always been successful with immense earnings and dividends as elsewhere shown in this bill; that the market of starch was entirely in the hands of said Corn Products factories; that the market of the said Kingsford Company alone in the starch business exceeded that of any factory and was preferred in the market to all others and in every household and with a profitable business for sixty years past, entirely unequaled and amounting to at least $500,000 per year, and certainly worth

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at a reliable estimate in annual profits far more than that of the two and a half factories put in by said Standard Oil Company.

53. That the management of the business and market of the thirty-five and a half factories of the Corn Products Company cannot be safely entrusted to the Standard Oil Company, because it is a great monopoly and therefore a great and distinguished offender, being prosecuted as guilty of criminal offenses by the National Government, and declared condemned and adjudged guilty of great offenses against the policy and interests of the American People; and that the management and control of the assets of $80,000,000 of the Corn Products Company while under control of the said Standard Oil Company, is, and will be, like that of the management and control of the Standard Oil Company itself, and of the many other companies, and corporations, conducted from its office in 26 Broadway, New York, in contempt of and in conflict with the laws of this state; and to entrust them with the same is to hand over the ownership, management and control of nearly forty factories of which the greater and more important are situated in the State of Illinois, and if allowed to remain under such control will be in the hands of criminals as held and adjudged by the laws of this state.

422 54. Your Orator alleges, that the Standard Oil Company and its co-conspirators have placed the possession of the thirty-eight factories described in this Plan, in the hands of the Corn Products Manufacturing Company of New Jersey, as its and their agent, which now conducts and controls the manufacture in the several factories, in obedience to the orders of the Standard Oil Company; and the products thereof, now bear the brands of the Corn Products Manufacturing Company; and your Orator alleges that this Corn Products Manufacturing Company is the old Glucose Sugar Refining Company of New Jersey, which was condemned as a monopoly and offender against the trust laws of the state, and now remains under the condemnation and ban of the laws of this State; as adjudged by the Supreme Court of Illinois; and said manufacture and control of so extensive and important an industry, in open and flagrant contempt of the law, will remain in said criminal corporation until ousted by the Receiver appointed by this Court.

55. To the end therefore that your Orator may have a remedy and equity in the premises and that the Standard Oil

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Company and the said Corn Products Company and the said Corn Products Refining Company and the said Corn Products Manufacturing Company all corporations of the State of New Jersey, and the said C. H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. C. Sherwood, and E. T. Bedford, all of whom are hereby made parties defendants to this Bill of Complaint, may be duly summoned to answer the same (but not under oath, the oath to their respective answers being hereby expressly waived); and to the end that a receiver may be appointed of the properties and affairs of the said corporations, respectively; and to the end that said defendants, and every of them, respectively, and their respective attorneys, agents and servants, may be enjoined from paying said dividend or doing or performing any of the unlawful acts above complained of by your Orator, and, particularly, from selling or conveying, or causing to be sold or conveyed, to the said Corn Products Refining Company or to any other company, corporation or individual, or from meddling with, any of the property now standing in the name of the said Corn Products Manufacturing Company, or any of the property and assets of the Corn Products Company, including the said real estate situated in the State of Illinois, and the thirty-five and one-half factories and plants above described; and to that end there may be a reorganization, of the said Corn Products Company, and of the said Corn Products Manufacturing Company, under the directions of this Honorable Court; and to the end that your Orator may have such other and further or different relief, in the premises, as equity may requir, your Orator prays that a writ of summons in due form be issued by the clerk of this court directed to the Sheriff of the said County of Cook, commanding the said Sheriff that he summon the said defendants the said Standard Oil Company and the said Corn Products Company, and the said Corn Products Refining Company, and the said Corn Products Manufacturing Company, the said C. H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. C. Sherwood, and E. T. Bedford, to be and appear before
423 this Honorable Court and the term thereof to be begun and held on the Monday of November, A. D. 1907, in

the City of Chicago, in the County of Cook, in the State of Illinois, to then and there answer this Bill of Complaint, as aforesaid, and abide by and perform the orders and decree of this Court in this cause; and your Orator will ever pray, etc.

A. B. JOYNER,
Solicitor for Complainant.

424 And on to-wit: on October 19th A. D. 1907, there issued out of, the Office of the Clerk of said Court the Peoples Writ of Summons directed to the Sheriff of Cook County to execute, which said Writ with the Sheriff's return thereon endorsed is in the words and figures as follows, to-wit: Writ of summons issued Oct. 19, 1907.

425 State of Illinois, }
Cook County. } ss.

The People of the State of Illinois, to the Sheriff of said County, Greeting:

We command you that you summon Standard Oil Company pany of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, all corporations of the State of New Jersey, C. H. Matthiessen, Charles L. Glass, Joy Morton, William J. Calhoun, William W. Heaton, Norman B. Ream, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. C. Sherwood and E. T. Bedford, if they shall be found in your County, personally to be and appear before the Superior Court of Cook County, on the first day of the term thereof, to be held at the Court House, in Chicago, in said Cook County, on the first Monday of November next, to answer unto George F. Harding in his certain Bill of Complaint filed in said Court, on the Chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, Charles W. Vail, Clerk of our said Court, and the Seal thereof, at Chicago, in said County, this 19th day of October, A. D. 1907,

(Seal)

CHARLES W. VAIL,
Clerk.

Sheriff's return to summons.

426 Pd. 1300
100

Served this writ on the within named Corn Products Refining Company, a corporation, by delivering a copy thereof to Charles L. Glass, Director of said corporation this 23d day of October, 1907.

The president of said corporation not found in my county. Also served this writ on the within named Corn Products Manufacturing Company, a corporation, by delivering a copy thereof to G. W. Powers, president of said corporation, this 23rd day of October, 1907. Also served this writ on the within named defendant, Charles L. Glass, by delivering a copy thereof to him this 23rd day of October, 1907. Also served this writ on the within named defendants, Joy Morton, T. B. Wagner & William J. Calhoun by delivering a copy thereof to each of them this 24th day of October, 1907.

Also served this writ on the within named Corn Products Company, a corporation, by delivering a copy thereof to Joy Morton, Director of said corporation this 24th day of October, 1907.

The president of said corporation not found in my county.

Also served this writ on the within named Standard Oil Company of New Jersey, a corporation, by delivering a copy thereof to G. W. Stahl, agent of said corporation, this 24th day of October, 1907. The president of said corporation not found in my county.

The other within named defendants not found in my county.

CHRISTOPHER STRASSHEIM,
Sheriff.

By HENRY F. HERMANN,
Deputy.

5761 263656 Hermann.

Superior Court of Cook County. November Term, A. D. 1907.
George F. Harding *vs.* Standard Oil Co., *et al.*
Summons in Chancery. Filed Nov. 4 10-57 A. M. 1907.
Charles W. Vail, Clerk.
A. B. Joyner, Solicitor.

Christopher Strassheim, received Oct. 23, 1907.

427 And afterwards to-wit: on October 22nd, A. D. 1907 certain proceedings were had and entered of record in said Court to-wit:

George F. Harding, *vs.* Standard Oil Company, *et al.* } Bill. 263565

Order of Oct. 22, 1907.

On motion of solicitor for complainant leave to amend bill of complaint within three days.

(Endorsed on the back)
Gen. No. 263565 Term No. 9213
Superior Court Cook County.
George F. Harding v. Standard Oil Co. *et al.*
Order granting leave to amend bill of complaint.
Entered Oct. 22, 1907. Copy.

And afterwards, to-wit, on the 24th day of October, A. D. 1907, a certain appearance was filed in the office of the Clerk of said Court, in words and figures following to-wit:

Special appearance, filed Oct. 24, 1907.

State of Illinois, } ss.
Cook County. }

SUPERIOR COURT THEREOF,

to the.....Term, A. D. 1....

George F. Harding, *vs.* Standard Oil Co. } Action. 263565—9213.

We hereby enter the Special appearance of Joy Morton solely for the purpose of withdrawing the copy of the bill of complaint herein.
Defendant—in the above entitled cause.

MORAN, MAYER & MEYER,
Attorney for.....

Chicago, Ills.

(Endorsed on the back.) No. 263565 Term No.

SUPERIOR COURT COOK COUNTY.

Harding v. Standard Oil Co., *et al.*

Special Appearance for purpose of withdrawing copy of bill of complaint.
Filed Oct. 24, 4-59 P. M. 1907.

CHARLES W. VAIL,
Clerk.

Affidavit, filed Oct. 24, 1907.

431 And on, to-wit, on the 24th day of October, A. D. 1907, a certain affidavit was filed in the office of the Clerk of said Court, in words and figures following to-wit:

432 State of Illinois, } ss.
County of Cook. }

IN THE SUPERIOR COURT THEREOF.

George F. Harding,
vs.
Standard Oil Company of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, all corporations of the State of New Jersey, C. H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. C. Sherwood and E. T. Bedford.

General No. 263565.
In Chancery.
Term No. 9213.

Abner C. Harding, being first duly sworn on oath, says that he is the agent in this behalf of George F. Harding, complainant in the above entitled cause; that C. H. Matthiessen, William H. Heaton, Norman B. Ream, Thomas P. Kingsford, W. C. Sherwood, the Standard Oil Company of New Jersey and E. T. Bedford, defendants in said cause, and each of them, are non-residents of the said County of Cook and of the said State of Illinois, and that no attorney, or attorneys, have appeared for them, or for any or either of them in said cause; that affiant is informed and believes that the place of residence of said E. T. Bedford is New Bedford, in the State of Massachusetts; that affiant is informed and believes that said Standard Oil Company of New Jersey has and maintains an office at Number 26 Broadway, New York City, New York. Affiant further states that he has made diligent inquiry to ascertain the places of residence of the said C. H. Matthiessen, William W. Heaton, Norman B. Ream, Thomas P. Kingsford and W. C. Sherwood, and of each of them and that upon diligent inquiry made, as aforesaid, the place of residence of

each of the said parties, last aforesaid, cannot be ascer- Affidavit filed Oct. 24, 1907.
433 tained, and the same are unknown to said complainant and to this affiant: Affiant further states that the places of residence of Benjamin Graham and of H. G. Herget, two of the defendants to said cause, are unknown to affiant; that no attorney, or attorneys, have appeared in said cause for said persons, last aforesaid, or for either of them; that affiant has made diligent inquiry to ascertain the places of residence of said persons last aforesaid, and the place of residence of each of them, and that upon diligent inquiry the place of residence of each of said persons, last aforesaid, cannot be ascertained and is unknown to said complainant and to this affiant.

Further affiant saith not.

(Signed) ABNER C. HARDING.

Subscribed and sworn to before me this 23rd day of October, A. D. 1907.

(Signed) ALICE WILLNER,
Notary Public.

434 And afterwards, to-wit, on the 25th day of October, Amended bill of complaint, filed Oct. 25, 1907.
A. D. 1907, a certain amended bill was filed in the office of the Clerk of said Court, in words and figures following to-wit:

435, Term No. 9213. Gen. No. 263565.

IN THE

SUPERIOR COURT OF COOK COUNTY

October Term, A. D. 1907.

George F. Harding,
Complainant,
vs.
The Standard Oil Company of New Jersey, *et al.*,
Defendants.

Amended Bill of Complaint.

A. B. JOYNER,
Solicitor for Complainant.

No. 8.
Filed Oct. 25, 9:20 A. M., 1907. Charles W. Vail, Clerk.

Amended bill of complaint, filed Oct. 28, 1907.

436 State of Illinois, }
County of Cook. } ss.

SUPERIOR COURT OF COOK COUNTY,

October Term, A. D. 1907.

George F. Harding,

Complainant,

vs.

The Standard Oil Company of New Jersey, *et al.*,

Defendants.

AMENDED BILL OF COMPLAINT.

Now comes the complainant herein and by leave of Court amends his bill of complaint herein so that the same shall read as follows, namely:

To the Judges of the said Superior Court in Chancery Sitting:

Your Orator, George F. Harding, a resident and citizen of the State of California, humbly complaining, respectfully represents unto your Honors: That your Orator on or before the year 1904 was the owner of 500 shares of the stock of the Corn Products Company of New Jersey and ever since has been and still is the owner and holder of the same and that the value of said stock exceeded twenty thousand dollars.

1. That the Standard Oil Company of New Jersey, and the defendants hereinafter named, constituting and controlling the Directory of the said Corn Products Company, then and ever since have occupied the position of Trustees of your Orator, as to said stock, and while acting as such Trustees they have wrongfully impaired and injured the value of all of said stock and are now further injuring and impairing the same by the conspiracy and misconduct hereinafter set out in this bill.

That said Standard Oil Company, and co-defendants, have wrongfully obtained possession by said conspiracy and misconduct of all the property of the Corn Products Company, including thirty-five and one-half factories engaged in the manufacture of glucose, starch and by-products, and that by a combination in the year 1906 the said defendants having also

Amended bill of complaint, filed Oct. 28, 1907.

acquired the stock of two and one-half companies and of their factories engaged in the same business, have, while ruining the value of your Orator's stock, created a monopoly in the manufacture and sale of said necessaries of life, contrary to the interests and policy, and to the great injury of the People of the United States; and thereby now control more than 90% of the manufacture of the same, and have advanced the price of the same more than 100%.

2. That the Corn Products Company was and is a corporation organized under the laws of the State of New Jersey on February 28, 1902, with a capital stock of $80,000,000 divided into preferred stock of $30,000,000 and common stock of $50,000,000; and the stock of your Orator of $50,000 consisted in equal quantities of said preferred and common stock in shares of $100 each.

3. That when your Orator acquired the said stock, and for a considerable period theretofore, and for some time thereafter, the said Corn Products Company was the owner of said thirty-five large and valuable factories and plants aforesaid, and of the stock of the companies owning and operating the same in the States of Illinois, Indiana, Ohio, Iowa, and elsewhere, and also owned 49% of the stock of the New York glucose Company of New Jersey with its factory in
437 Edgewater, New Jersey, and that their said business of manufacture was then and therefore and thereafter during the life of said company yielding large profits; that said factories had cost and continued to be worth up to the time of said conspiracy and misconduct hereinafter stated in this bill, more than $50,000,000; that the price of said stock of said Corn Products Company on the New York Stock Exchange at the formation of said company in February 1902 amounted to a total of $44,413,019; that the net earnings of only six of said companies (while owned by the said defendant, the Corn Products Manufacturing Company) from August, 1897, to February 28, 1902, exceeded $11,500,000; that the net earnings of said thirty-five and one-half factories for the ensuing period from February 28, 1902, to February 28, 1906, were $15,355,140, as stated by defendants (assuming only for the last year for which no statement has ever been published, that the earnings equaled that of the prior year).

That during the respective periods aforesaid, from August, 1897, to February 28, 1902, out of the proceeds of the six factories, the Corn Products Manufacturing Company earned as

Amended bill of complaint, filed Oct. 25, 1907.

and managed by the Standard Oil Company, and under and in pursuance of the following so-called Plan, which was afterwards wrongfully and unjustly carried into execution to the great wrong and injury of your Orator as hereinafter set forth in this bill.

PLAN.

6. "The Corn Products Refining Company will be organized under the laws of New Jersey with a capital of $30,000,000 Preferred and $50,000,000 Common Stock, the same as the Corn Products Company and with the same provisions as to preference.

Mr. E. T. Bedford will take the Presidency of the company and the management of its business, bringing into the Board of Directors those associates who have been actively connected with him in the New York Glucose Company.

When the plan becomes effective the Corn Products Refining Company will own: (1) At least a majority of the capital stock of the Corn Products Company; (2) the entire capital stock of the New York Glucose Company, not already acquired by the Corn Products Company; (3) the entire capital stock of the Warner Sugar Refining Company; (4) the entire capital stock of the St. Louis Syrup & Preserving Company; and the new company, with its subsidiary companies will have a net working capital of approximately $5,000,000.

439 All stock set apart for exchange for stock of the Corn Products Company and not used for that purpose will remain in the treasury.

In effect, the Corn Products stockholders will surrender one-third of their holdings for the purpose of acquiring the entire interest in the three companies above named, not already owned by the Corn Products Company.

Those three companies have modern works, and no bonded debt except $2,300,000, while the subsidiary companies of the Corn Products Company, have a total bonded debt of $7,293,000.

The three companies, New York Glucose Company, Warner Sugar Refining Company and St. Louis Syrup & Preserving Company, contribute a net working capital of about $2,000,000 toward the joint working capital of $5,000,000.

During the year just ended those three companies did about 50% of the entire business, domestic and export.

The financial status of all companies to be verified by public accountants and title to be examined by counsel. Plan.

The undersigned stockholders among others have agreed to deposit stock under the foregoing plan.

C. H. MATTHIESSEN,
NORMAN B. REAM,
WILLIAM W. HEATON,
JOY MORTON,
J. B. GREENHUT.

7. Your orator alleges that the printed plan aforesaid was sent, as your Orator is informed and believes, to some of the stockholders of The Corn Products Company at some date unknown to your Orator, but believed to be in the year 1906, and was accompanied by a paper, of which the following is a copy, viz.:

"Title Guarantee and Trust Company,
146 Broadway.

New York, Jan. 6, 1906.

To the Stockholders of The Corn Products Company:

In accordance with the annexed Plan, The Title Guarantee and Trust Company is prepared to receive your stock on deposit and to issue transferrable certificates of deposit therefor, exchangeable for stock of The Corn Products Refining Company, on the basis of three shares of your stock, Common or Preferred, for two shares of the same class of the stock of The Corn Products Refining Company.

Scrip will be issued for fractions of shares, exchangeable for full shares in sums of one hundred dollars or multiples thereof.

The right is reserved to declare the Plan inoperative, in which event all stock deposited will be returned without cost to depositor, upon surrender of the certificates of deposit issued therefor, suitably endorsed, on or after March 31, 1906.

The time to deposit stock under the Plan will expire February 1, 1906, at 3 p. m.

The Certificates must be accompanied by power of its transfer in blank, the execution of which must be witnessed or guaranteed by someone known to this Company, or acknowledged before a Notary Public, under his official seal.

C. H. KELSEY,
President.

8. Your Orator alleges and charges that the essence and

Amended bill of complaint, filed Oct. 28, 1907.

effect of this Plan was the enforced liquidation of the Corn Products Company.

440 That this liquidation was to be accompanied under color and by means of a bargain for the benefit of the Standard Oil Company, and all of said schemes, divisions, and details of said Plan were in effect, merely, for the purpose, on the part of the Standard Oil Company and the parties in its interest, to give to said Standard Oil Company the monopoly of the glucose, starch, and by-products manufactured in the United States as already stated.

That the object of the Standard Oil Company was more easily accomplished by special contracts in advance with the said conspirators by which they were enabled to sell their stock on better terms than stated in said Plan; butt there was reserved for your Orator and other stockholders the necessity of uniting in said Plan and consenting to said bargain, with no other alternative, as the Standard Oil Company had assured itself of the entire market for said Corn Products stock; and, if it could be sold at all, it must either be sold on the terms of this Plan or at private sale to the said Standard Oil Company, as elsewhere more fully shown in this bill.

9. Your Orator shows to your Honors that said Plan provided for the formation of the Corn Products Refining Company, capitalized at $80,000,000, and divided said stock between the holders of the $80,000,000 stock of the Corn Products Company so far as issued ($72,500,000), on the basis of two shares of the new company for three of the old, giving 60% of the stock of the new company to the stockholders of the Corn Products Company who should accept these terms.

That this division left the remaining 40% of said stock of said company to the holders of the capital stock of the Warner Sugar Refining Company and of the capital stock of the St. Louis Sirup and Preserving Company, and of 51% of the capital stock of the New York Glucose Company.

That as stated in said Plan: "in effect the Corn Products shareholders will surrender one-third of their holdings for the purpose of acquiring the entire interest in the three companies (last) above named, not already owned by the Corn Products Company."

That said 40% given to the holders of said two and a half factories had then a total value on the New York Stock Exchange of $16,854,569.

10. That the actual value of the said stock of said two and a half companies and their factories did not exceed three

million dollars ($3,000,000). That they were then owned by the Standard Oil Company which had then bought the same for less than said sum. That the said 51% of the stock of the New York Glucose Company was absolutely worthless as it had nothing to represent it in value except its factory at Edgewater, New Jersey, that could not be economically used for the manufacture for which it was built; and this is now admitted by said defendant in their first annual statement. That said two and a half companies were capitalized at less than $5,500,000 and were subject to an indebtedness, bonded and floating, of $3,250,000 dollars; that they never had reported dividends or net earnings during their existence, of from five to ten years, and that they had no right to declare such dividends, and had no net earnings, is sufficiently explained by said indebtedness approximating the amount of their capital. That the statements of said three companies of January and February, 1906, evidently prepared for the purpose of justifying this division at the time show that at the highest estimate they were then worth less than $8,200,000.

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441 That the gross earnings by the Warner and St. Louis factories for the only year for which comparison can be made, due to the suppression by our Trustee of the statement of the Corn Products Company for the year, as reported in 1905, give gross earnings, Warner, $83,417, St. Louis, $111,932, total $195,349.

The gross earnings of the thirty-five companies of the Corn Products Company for the same period was $2,968,312; (omitting as a negligible quantity the gross earnings of the New York Glucose Company, being the half factory in each case). These gross earnings of the said two companies show that they the said owners should have been given upon the basis of their gross earnings 6% of the stock of the Corn Products Refining Company, instead of what this plan gave viz: 40%, and the management and control thrown in, and assured by the terms of the charter for many years to come.

So far as known said two factories had neither trade marks, patents, good will, nor any fruits to show of successful experience, were loaded with debt, nearly to the amount of their capital, and were burdened with infirmities of their own as to water supply and location.

11. That said Plan and Division gave to said Standard Oil Company, the holders of the said stock of the two and a half companies and their factories, a profit of $15,000,000 out-

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right. That said Division and Plan further provides for the permanent ownership and monopoly in the provision, namely: "Mr. E. T. Bedford will take the presidency of the company and the management of its business, bringing into the Board of Directors those associates who have been actively connected with him in the New York Glucose Company." That said Bedford, and his associates, of the New York Glucose Company, were simply Directors and Officers and Agents of the Standard Oil Company, and said Bedford and others of said associates were also openly Trustees of your Orator and the stockholders of said Corn Products Company, so that this Plan was simply a gift and bargain by which our Directors and Trustees sold said $80,000,000 of Corn Products stock to themselves.

12. That by this Plan, according to the valuation given the 40% of the stock of the Corn Products Refining Company, (which was paid for by said two and a half factories worth $8,200,000, at the very highest price named by themselves) then the 60% of the capital which remained was to be treated as only worth $12,000,000; and this proportionate sum of $12,000,000 was a fair and adequate division according to the equity of said Plan as administered by our Trustees to the holders of the $80,000,000 of Corn Products stock; and this was so just a Division and Plan, that it was certified to by the remaining Trustees and leading stockholders, who agreed to it in advance as shown by the following statement annexed to said Plan, namely: "The undersigned stockholders, among others, have agreed to deposit stock under the foregoing Plan.

C. H. Matthiessen,
Norman B. Ream.
William W. Heaton,
Joy Morton,
J. B. Greenhut."

That this was a certificate by a part of our Trustees and a part of the Directors of the Corn Products Company to their cestuis que trust, that it was a fair division, and an honest Plan, namely: That they should give up a third of their capital and surrender their right to the conduct of their own business to the Standard Oil Company, that 442 they should besides pay $17,000,000 for two and a half factories, one of them worthless, and the other two picked up by the Standard Oil Company at less than $2,000,000, and all incumbered for more than their value—that this fixing a

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valuation of $12,000,000 for the $80,000,000 capital of the Corn Products stock (in proportion to said $8,000,000 valuation of the said two and a half factories) was a fair one and should have the consent of every stockholder—urging that all their fellow stockholders should hasten to accept these terms (for their 35½ factories, for their trade secrets, good will, long experience, market and independence, and control of their own affairs, always successful, and about to be more prosperous than ever), giving three shares of their stock for two shares of stock in the Corn Products Refining Company, which stock at its highest value, proved worth in the market of 1906, less than $27,000,000 an immediate loss of $20,000,000—which has now become $30,000,000, as elsewhere shown in the bill.

13. Your Orator further shows unto your Honors, that while it may not be further necessary to show that this Plan is most inequitable—that our trustees and the Standard Oil Co. should have given themselves the benefit of a bargain, both sides of which they made themselves, yet it may be wise to show what was the actual character and value of the assets represented by the $8,000,000 of Corn Products Stock, sacrificed by this plan; and your orator therefore alleges the following facts, namely:

That in January, 1906, the Corn Products Company owned stock of thirty-five and one-half companies and their factories as follows:

I.

Six factories formerly owned and operated by the Glucose Sugar Refining Company of New Jersey.

(1.) The Chicago Sugar Refinery, which had actually cost, and was worth more than $8,000,000 with its valuable site on Taylor street and Chicago River, which was, and is, worth, site alone $3,000,000;

The legal description of the said property now held and operated in the name of the said Corn Products Manufacturing Company, in the City of Chicago, in the County of Cook, in the State of Illinois, as above shown, is as follows, namely: Blocks Seventy-five (75) and Seventy-eight (78) (except Taylor street) in School Addition to Chicago, in Section Sixteen (16), Township, Thirty-nine (39) North, Range Fourteen (14) East of the Third Principal Meridian, in the City and County and State aforesaid.

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(2) The factory of the American Glucose Company of Peoria, Illinois, then equal in value as a factory to that of Chicago; and both factories were unrivaled in capacity and excellence of products.

(3.) The factory of the Davenport Sugar Refining Company, of Davenport, Iowa, very favorably situated, for the manufacture of Glucose, sirup, and by-products, and of great value, exceeding $2,000,000.

(4.) The factory of the Peoria Grape Sugar Company in Peoria, Illinois.

(5.) The factory of the Rockford Sugar Works, of Rockford, Illinois.

(6.) The factory of the Firminich Manufacturing Company of Marshalltown, Iowa. That the said last three 443 factories had cost more than $1,500,000 each and had a grinding capacity of 30,000 bushels daily.

14. That all of said six factories, with a working capital of $1,500,000 had belonged to the Glucose Sugar Refining Company, incorporated August 7, 1897, with a capital stock of $14,000,000, 7% cumulative Preferred, and $26,000,000 Common stock; that the Corn Products Company was organized on February 28, 1902, and then acquired nearly all the capital stock of the said Glucose Sugar Refining Company, in exchange for shares of the Corn Products Company, paying for said capital stock to the extent of $13,000,000 of the Glucose Preferred stock and of Twenty-one millions and a quarter of Glucose Common stock, by $16,081,750 of Corn Products Preferred stock, and $26,600,000 of Corn Products Common stock, holding in reserve $1,000,000 of Corn Products Preferred, and $3,500,000 of Common to acquire outstanding Glucose shares, nearly all of which were later exchanged for the said Corn Products Company's stock; the Corn Products Company paying in said exchange One and a quarter shares of their stock for each share of Glucose Sugar stock; in short paying fifty millions of the capital stock of the Corn Products Company for $40,000,000 of the capital stock of said Glucose Sugar Refining Company.

15. The Glucose Sugar Refining Company owning only six factories and surplus and working capital, had no bonded debt, and had earned and paid dividends to the amount of $6,763,000 from the earnings of said six factories, (7% upon the Preferred ever since said company was organized in August, 1897, and 6% on the Common, commencing December 1, 1898, up to December, 1901, when the yearly rate was reduced

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to 4%); that until these six factories became the property of the Corn Products Company in February, 1902, the Glucose Sugar Refining Company expended $2,152,000 upon said factories, and the average net earnings of the same for the three prior fiscal years were annually $2,969,624, or 8% on the total capitalization of $40,000,000; and these are the facts as given in the annual statements of the said defendant, said Glucose Sugar Refining Company, now known as the Corn Products Manufacturing Company. That the value of the said six factories with said million and a half of working capital, and a surplus of $2,632,985, was then equal to the value of the stock of the Corn Products Company as given in exchange on February 28, 1902; and that value at the time of said exchange was 95c on the dollar for the Preferred and 38 3/8c on the dollar for the Common stock upon the New York Stock Exchange; and said Glucose Sugar Refining Company was not only enjoying a highly prosperous business, but was in all respects in a very strong condition.

That the total actual value in cash of the said six factories alone in February, 1902, was more than $27,000,000; and your orator alleges that said six factories as a whole were never afterwards of less value, but were of this value or more at the time of said Plan, and their seizure by the Corn Products Refining Company in 1906.

II.

16. Your Orator further shows that the Corn Products Company at its formation, on February 28, 1902, in addition to the six factories aforesaid, acquired 29½ additional factories, with the stock and good will of the companies owning the same, and also with ample working capital as follows, namely: 4½ of said factories engaged in manufacturing glucose were bought by acquiring the stock of the Charles Pope Glucose Company, with its two factories at Geneva and Venice, Illinois; and the factory at Pekin, Illinois, was acquired with the stock of the Illinois Sugar Refining Company; and 49% of the stock of the New York Glucose Company with the same per cent. of its factory at Edgewater, New Jersey.

17. And said company also acquired the stock of the United States Glucose Company; which last named stock with its glucose factory and the remaining 24 factories of the 35½ factories aforesaid, which were starch factories, were acquired by the purchase then made of the entire stock of the

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National Starch Company; by which they were up to February 28, 1902, owned.

18. That the Corn Products Company acquired by exchanges of its own capital stock, amounting to $80,000,000, practically all the said stocks, and with them the factories of said companies; and paid therefor by apportioning the shares of the Corn Products stock as follows: (1.) It paid $46,082,050 of Common and Preferred stock as above stated for said Glucose Sugar Refining Company stock of $40,000,000 with its six factories aforesaid. (2.) That it paid $7,125,240 Preferred stock and $15,539,565 Common stock for said 49% of the New York Glucose Company stock amounting to $1,225,000; and for $750,000 of the shares of the Illinois Sugar Company with its factory at Pekin; and for $120,000 shares of the Charles Pope Company stock with its two factories at Geneva and Venice; and the Corn Products Company also acquired in consideration of the stock given for said three and a half factories last named, $1,400,000 in cash for additional working capital; the sum paid in cash by said Corn Products Company at the then value of its stock so paid, was $12,673,012.

19. That the sums paid for the factories at Geneva and Venice and Pekin were the sums upon which dividends had always been paid; and the factory at Pekin is that claimed by the Corn Products Refining Company, defendant, in its statement of 1907, as that in the best location for a glucose plant and also as being extended in grinding capacity for that reason. That in the purchase for the stock and factories, twenty-five in number, of the National Starch Company, there was apportioned, and paid for them $3,469,000 Preferred stock and $2,201,220 Common stock; making the sums paid in cash as ascertained by the value of the Corn Products shares on the New York Stock Exchange at the time, namely, $4,132,212.

20. That said National Starch Company had a capital stock of $10,000,000, of which half was Preferred stock upon which a dividend of 6% had been paid ever since the organization of said company in 1900, and it had also a bonded debt of $7,763,000 upon which it had paid interest; and upon which interest has ever since been paid.

That said twenty-four starch factories included most of the starch factories in the United States, and supplied most of the market for starch of every standard quality; and included all the factories of the greatest reputation, producing

goods of the highest excellence and favorites in every household; in which should be named especially Kingford's, and various factories, Erkenbrecher's, Gilbert's, Argo's and others, of national reputation, and all worth every dollar of the capitalization and indebtedness above described.

21. And your Orator alleges that outside the 49% of the New York Glucose Company's stock, the factories and 445 stock of the constituent companies of the Corn Products Company as stated were fully worth the values of the stock of said Corn Products Company paid therefor; and that the cash value of said Corn Products Companies stock determined by its price as fixed by the market of the New York Stock Exchange at the time of the formation of said company, amounted to a total of $44,413,019, and they continued to be worth this sum up to the time in 1906, when they were nominally given to the Corn Products Refining Company of New Jersey, and surrendered by the terms of said plan at a loss of $20,000,000, as elsewhere more fully stated.

22. Your Orator further shows unto your Honors that the actual earnings of said 35½ factories of the Corn Products Company, as shown by the annual statements of said defendants have been such as to show the solid basis upon which the value of said stock rests and are as follows: Earnings from February 28, 1902, to February 28, 1903, the first year, the Corn Products Company earned $4,013,841.

Earnings for the year, ending Feb. 28, 1904, $5,571,003.

Earnings for the year, ending Feb. 24, 1903, $2,885,148.

Earnings for the year, ending Feb. 28 1906, $2,885,148 (estimated), report suppressed.

Earnings of 49% of the New York Glucose Company, for the year ending December 31, 1904, $391,851; and for the year ending December 31, 1905, $307,252, as reported.

That the total earnings of the Corn Products Company for the years from February 28, 1902, to February 28, 1906, were $16,054,253, as shown by the annual statements of the defendants themselves, excepting only for the one year from February 28, 1905, to February 28, 1906, which have never been reported, being due after the liquidation of said company by the Standard Oil Company and its associates, and so its earnings have been assumed to be equal to the reported earnings of the previous year, the smallest in its history, namely, $2,885,148.

That these large earnings were expended by the Corn Products Company in dividends to the amount of $6,942,040.

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That said earnings were further expended in repairs and rebuilding and remodeling of its factories, namely, $3,538,003.

That said earnings were further expended by paying the interest upon the debts of the New York Glucose Company and of said starch companies, namely, $1,662,598.

23. That there remained a surplus of nearly $4,000,000 belonging to the Corn Products Company on February 28, 1906; and to this should be added its working capital to the amount of at least $3,000,000; a total of $7,000,000 of surplus and unexpended earnings; and this prosperous company did not then owe a dollar of indebtedness, and its capital of $80,000,000 was invested in the stock of thirty-five companies and their thirty-five factories worth every dollar of said capital and besides in the 49% of the said New York Glucose Company and its factory.

24. Your Orator further alleges that the said Plan is an old and ingenious device by which the stockholders of the Corn Products Company, and of your Orator are to be forced into a surrender of their stock under this Plan to the Standard Oil Company, through its new agent, the Corn Products Refining Company of New Jersey; that the name itself of the Corn Products Company in 1906, when in its most prosperous condition was taken from the list of companies
446 listed upon the New York Stock Exchange, by the action of the Standard Oil Company and their fellow associates and defendants, and substituting the name of the new company in order that the stockholders of the Corn Products Company could have no other disposition of said stock except that furnished by the Plan.

That the said Standard Oil Company keep on foot the nominal entity and control of the Corn Products Company and now retain its stock so far as exchanged under this Plan for that of the Corn Products Refining Company; and the Board of Directors is selected from the Directors and Agents of the Standard Oil Company, and entirely in their interests, and the factories are in possession and under control of the Standard Oil Company, every one of the thirty-eight factories charged in said plan, being so managed as the property, and in the name of the Corn Products Manufacturing Company, and conducted under orders from the Standard Oil Company through said Corn Products Refining Company; and that each one of the factories is managed from the office of the Standard Oil Company at 26 Broadway, New York; and the manufacture and sale is conducted without any con-

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sideration for the real interests of your Orator, and the stockholders of said Corn Products Company, but solely for the benefit of the Standard Oil Company, yet the said Standard Oil Company ingeniously keeps on foot through its agents and subsidiary companies the pretense of management and control through the Directors of the Corn Products Company aforesaid, who are simply agents of the Standard Oil Company.

That the very name of the Corn Products Company does not longer appear in the market, is unknown in the production and manufacture of glucose and by-products; and for purposes of concealment and to defeat all publicity or knowledge of what has occurred, the very brands, trade marks, good will of the Corn Products Company, and every detail of its manufacture and sale is now done in the names of said companies, scarcely distinguishable from that of the Corn Products Company; that the factories are run in the name of the Corn Products Manufacturing Company, and the business is done in the name of the Corn Products Refining Company; that the Corn Products Company has no office or telephone, and its stockholders are denied all information of its business; and every atempt is made to blot out the name and connection of the Corn Products Company with the said business and manufacture in which it was so successful, and on the eve of its greatest success, and of it brightest future; and the money earned by the 35¼ factories of the Corn Products Company amounting annually to $7,000,000 a year, are now pouring into the hands of the Standard Oil Company, at 26 Broadway, New York.

25. Your Orator alleges, that the Standard Oil Company was really the Trustee of your Orator, and managed the business and property of your Orator and fellow stockholders during the entire history of said Corn Products Company, and up to and ever since the said conspiracy charged in this bill; that said Standard Oil Company and their co-defendants have been in said position of trust and are now in said position of trust, for your Orator and other stockholders in like condition, and should be made to account for the profits they have made in said business of said Trust, and should be compelled to surrender it through the appointment by this court of a receiver.

Your Orator alleges that the Standard Oil Company began its campaign and conspiracy to create this monopoly in the manufacture and sale of starch and glucose, in 1898, by the

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formation of the New York Glucose Company of New Jersey, and the construction of its factory at Edgewater, Bergen 447 Point, New Jersey. That in 1898, had been recently formed the Glucose Sugar Refining Company of New Jersey, which with its six factories in Illinois controlled the manufacture and market of said products; and the factory at Edgewater, New Jersey, was intended to secure the monopoly of said manufacture and markets for the Standard Oil Company; that finding its first move in building its factory was abortive, because it was built outside the corn belt and could not be used to manufacture economically, the said Standard Oil Company joined in a wider combination and assisted in forming the Corn Products Company of New Jersey, and managed to have apportioned to it in said formation one-fifth or thereabouts of the Corn Products Company's $80,000,000 of stock, but said Standard Oil Company only put into said Corn Products Company 49% of the stock of the New York Glucose Company, reserving the control, the better to accomplish its purposes; that the fellow stockholders of the Corn Products Company, including the stock of thirty-five companies engaged in the same manufacture, very soon found themselves in the control of the Standard Oil Company; especially because the Standard Oil Company by the formation of the Corn Products Company had gained access to the patents, trade secrets, and everything that gave it the business success; and still more because the Standard Oil Company were thereby enabled to name the Directors of the Corn Products Company, and placed in said Directory one of its ablest Directors, Edward T. Bedford, who dominated the Company and continued its Director with other associates, really Directors of the Standard Oil Co., itself or its agents, thereafter. That the manufacture and market of the Corn Product Company was from its formation controlled by the Standard Oil Company, though without the knowledge of its stockholders to the real extent of such control, until later developed by the sequel when the said Bedford, and his associates, in the New York Glucose Company presented and since have enforced up to this hour the said Plan hereinbefore stated and shown.

26. That there were outside the Corn Products Company the factory of the Warner Sugar Refining Company at Waukegan, Ill., and another factory of the St. Louis Sirup and Preserving Company, at Granite, Ill., besides other factories

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in the Corn belt engaged in the manufacture of Starch or glucose, and the Standard Oil Company found it necessary to complete its monopoly to buy up the said two factories to make its monopoly more effectual. That in order to buy and control the stock of the Corn Products Company required a further investment of but one or two million of dollars, but this was effected through the agency of the New York Stock Exchange, upon which said Standard Oil Company caused the stock of the Corn Products Company to be listed, and by the devices familiar to said company of fictitious sales and purchases from and to themselves of the stock of the Corn Products Company, said Standard Oil Company easily and profitably raised and lowered the stock of the said Corn Products Company; so that at one time it was worth one hundred cents and at another time ten cents or less, judging of its value by the index furnished by the sales so manufactured on the New York Stock Exchange; that these fictitious sales and purchases were begun in 1902, and were continued during the life time of the Corn Products Company by said Standard Oil Company, and were aided by actual statements of the said Corn Products Company required by law annually, which, and rumors of the same nature, furnished alleged facts, so much to the prejudice of the Corn Products Company, half truths, and other falsehoods, that aided the Standard Oil
448 Company in its campaign upon the New York Stock Exchange; so that finally after the conduct of said campaign during 1903, 1904 and 1905, these false sales and purchases, led to sales of real stock to said Standard Oil Company, at prices named by the Standard Oil Company. That the campaign of the Standard Oil Company was in point of fact financed from the inside of the Corn Products Company, and so it is, that said Standard Oil Company, absolutely controlled, and controls, the majority of the stock of the Corn Products Company. That by the device of the Corn Products Refining Company of New Jersey and the bargains shown in the Plan already detailed, said Standard Oil Company in effect have been given them $15,000,000 at least for the pretended consideration of said two factories at Waukegan and St. Louis and of said 51% of said New York Glucose Company, and have placed the new company permanently in the hands of themselves and their Directors. That said Standard Oil Company has thus by easy stages and at slight cost, if any, but through the ruin of the said stockholders of

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the companies owning the said thirty-eight factories, obtained the entire business of the manufacture and sale of glucose and starch products in the United States.

27. Your Orator further alleges that the said Plan is especially inequitable as against your Orator and other Preferred stockholders of the said Corn Products Company. That they are invited by this Plan to give up one-third of their Preferred stock to the amount of $10,000,000, and its 7% yearly dividends. That the surplus then existing in 1905, was abundantly sufficient to pay such dividends as so contracted to be paid. That said Plan requires a surrender of their stock, ignoring entirely such interest at 7% due them; and the owners of said stock have ever since under this Plan and management and control and monopoly, suffered the loss of said interest and will continue to suffer that loss until the property is taken out of the hands of said defendants.

Your Orator alleges that the contract under which your Orator and other stockholders held their stock and stated in the charter of said Corn Products Company, and repeated in the Certificate of the Preferred and the Common stock aforesaid, issued to your Orator, or held and owned by him, is as follows, namely:

"The holders of the preferred stock shall be entitled to receive when and as declared from the surplus or net profits of the company yearly dividends at the rate of 7% per annum and no more, payable quarterly on dates to be fixed by the by-laws. The dividend on the preferred stock shall be cumulative and shall be payable before any dividends on the common stock shall be paid or set apart so that if in any year dividends amounting to 7% shall not have been paid thereon the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock."

"Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable and the accrued quarterly installments for the current year shall have been declared and the company
449 shall have paid such cumulative dividends for previous years and such accrued quarterly installments or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the Common stock payable then or thereafter out of any remaining surplus or net profit * * *

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"In the event of any liquidation or dissolution or winding up, whether voluntary or involuntary, of the company, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accured thereon before any amount shall be paid to the holders of the Common stock."

28. Your Orator alleges, that these provisions in the contract of the Preferred stock, as above stated held by him, were and are a part of the contract and contracts with him as to each amount and all amounts of the said shares of Preferred stock held by him, and were in full force and binding upon the said Corn Products Company and all other persons dealing with said Corn Products Company at all times during its history and are still in force and have never been set aside or destroyed by any action or consent upon the part of your Orator, but your Orator alleges and shows unto your Honors, that by said action of said Trustees, the defendants herein, in the attempted execution of said Plan, all the said property of hte Corn Products Company have been taken out of its hands, wrongfully and without right, and that its factories, and all its business, and its market, goodwill, trade secrets and patents, and licenses, necessary to the conduct of business, are now wrongfully in the possession, management, and control, of the Standard Oil Company, and others of said defendants, and the said Corn Products Company and the rights and interests of your Orator, have been annihilated, by and under the execution of said Plan and in pursuance thereof.

29. Your Orator further shows unto your Honors, that said Plan effects the preservation of a part of the common stock of the Corn Products Company and thereby secures to the conspirators the conseqnent control of both the Corn Products Company and the Corn Products Refining Company accomplished by the defeat and confiscation of the Preferred stock and of its preference; for it is claimed by said defendants that it was wise with due regard to the interest of all parties to cut down the Preferred stock and thereby take away $10,000,000 of the money put into it, yet at the same time it is also pretended and the Plan secures to the holders of the Common stock a value capitalized at $33,444,000 in the capital stock of the Corn Products Refining Company; and it now, as the sequel shows, pretends that a dividend can be

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shortly made on this very common stock of the Refining Company.

So that your Orator respectfully shows unto your Honors, that this common stock secures the control of the Corn Products Company and of the Corn Products Refining Company and can be manipulated into this immense sum; although said common stock was not entitled to a penny under the terms of said charter of the Corn Products Company until all of said Preferred stock, including the $10,000,000 of the Preferred stock cut off by said Plan had first been paid in full and until all unpaid cumulative dividends and interest 450 thereon were also paid to the last dollar.

That it is the truth and your Orator charges that this Plan was made to effect the common objects of said conspirators, namely: (1st) To secure to the Standard Oil Company the $17,000,000 given by said division in behalf of the factories held by it, and (2nd) to give value to the Common stock of the Corn Products Company which had been theretofore bought up by the Standard Oil Company and its said associate defendants in said conspiracy, and (3rd) the creation of the said monopoly of the manufacture and sale of glucose, starch and by-products. That as elsewhere stated in this bill the Standard Oil Company by the manipulation of the market, by the sale of the stock of the Corn Products Company on the New York Stock Exchange for years, without reference or regard to the real value of the stock and by fictitious sales of stock, that never were made or delivered, reduced said stock to nearly a tenth of its value. That a majority of the stock of the Corn Products Co. being acquired by this monstrous series of operations backed by the irresistible wealth and influence of the Standard Oil Company, and with entire indifference to the interests of other stockholders, the said Standard Oil Company was able at its pleasure, and at a price fixed by themselves, to acquire from their worn-out stockholders when compelled to sell, and to now control, the greater part of the $80,000,000 of actual capital and money of the Corn Products Company, and are now managing the business of all the property which they have acquired substantially for nothing, financed by itself and at the sacrifice of many individual stockholders, including your Orator, as elsewhere stated in this bill.

30. That your Orator had the right, specially contracted to stockholders of the same class, Preferred and Common, to

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have the $80,000,000 of assets of the Corn Products Company given to said stockholders in the order fixed by their respective contracts, and cannot be ousted of the same by and in behalf of their Trustees.

That the Preferred stock must be paid and after that the Common stock had a right to be paid out of the assets of the Corn Products Company; and that said stockholders had a right to refuse the bargain and substitute presented to them by their Trustees by this Plan. That the assets of the Corn Products Company were sufficient many times over to pay the Preferred stock without the surrender of a dollar of it. That what remained of the assets of the Corn Products Company was sufficient to pay the stock of the Common shareholders of said company, and it was a criminal act to compel said stockholders to have their properties destroyed and their independent right to control annihilated by this Plan, and the creation of this monopoly was an unjust and unlawful change of their condition.

31. Your Orator alleges that if the assets of the Corn Products Company were distributed in a Court of Equity, such court would have distributed to the Preferred stockholders full payment at par of their stock, instead of the liquidation under this Plan by which the Preferred stockholders must surrender one-third of their stock, including back dividends and interest, in order to give place to the common stock which is left a large residuum; that the assets of said Corn Products Company were ample to effect such distribution in a court of equity and that the effect of this Plan not only causes this injustice, but to this must be added the fact, that the price on the New York Stock Exchange of Preferred stock of the 451 Corn Products Refining Company, if accepted as an index of the its value, shows that this Plan compels a sale of the Preferred stock of the Corn Products Company to its exchange for the Preferred stock of the Corn Products Refining Company, worth less than 42 cents on the dollar, and this sacrifice is coupled with the assurance that the Corn Products Refining Company must manage the 35¼ factories under the control of the Standard Oil Company engaged in the misconduct and criminal violations of law for which the National government is demanding its punishment.

32. Your Orator further shows unto your Honors, that the facts herein alleged in regard to the action of the defendants in this conspiracy aforesaid remained unknown to your Orator until within a short time, a few months at best, when

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they were learned little by little, information being denied and withheld by his said trustees, as were the said defendants; and he charges that no notice was given to your Orator by defendants of any of their action or proposed action aforesaid, as set out in this bill, and what knowledge your Orator has obtained was gathered from time to time, and only after having been first concealed from him, and only learned with difficulty; one of the acts of concealment showing the secret manner in which they were done, namely, was that the very name of the Corn Products Company was counterfeited and concealed by the name given to the Corn Products Refining Company and of the Corn Products Manufacturing Company, and their atcual existence and relations were concealed. That these devices of said conspirators were meant to conceal, confuse and deceive your orator and other stockholders not in the said conspiracy; and your Orator alleges that had the truth been known to him he would have filed a bill in apt time to prevent the execution of said Plan and the consummation of said conspiracy. That your Orator alleges that he has been unable to learn or state more fully than as herein set forth how the designs of the said conspirators were effected and with what action, if any, of record, in any book or books, showing the conduct and action of the directors of the Corn Products Company, or of the Corn Products Refining Company (if they were so preceded, accompanied or followed), nor whether a merger was attempted, or if so, how made, under the color of the law, or laws, of New Jersey, or what will be so claimed by said defendants in that regard; but your Orator shows unto your Honors and charges, that whatever was done by said defendants for said end or object, whether by merger or otherwise, in said conspiracy, was wrongful, fraudulent, and grossly inequitable as against your Orator; and that said Plan, the formation and apportionment of said Corn Products Refining Company, were unequal, unjust and inequitable, as elsewhere more fully shown.

33. Your Orator further shows unto your Honors that the Standard Oil Company and its Directors, including the Directors of the New York Glucose Company, and the Directors of the Corn Products Refining Company, as well as the Directors and Officers of the Corn Products Company, who were all engaged in the conspiracy herein described, were in reailty trustees for the stockholders of the Corn Products Company, including your Orator. That they managed and controlled the Corn Products Company and its business for their own bene-

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fit; that they bought the factories of the Warner Company at Waukegan and of the St. Louis Company at Granite City, using the control of the market of glucose, and of the market on the New York Stock Exchange of the stock of the Corn Products Company to that end, and for the purposes of said conspiracy; and that in addition to the loss directly inflicted upon your Orator of said stock, the said conspirators by
452 their manipulation and misconduct, destroyed the value to a great extent of the stock of said Corn Products Company, and inflicted a loss of $2,000,000, outside of the stock aforesaid still owned and held by him upon your Orator, the value of the stock of the Corn Products Company disposed of by him at a great loss caused by the said Standard Oil Company and its associates in said conspiracy, who compelled and enforced the sale to themselves, for which loss they are liable as trustees who have violated their trust for their own benefit in this and the other various manipulations of the stock values on the New York Stock Exchange, and of the property of your Orator and other stockholders of the Corn Products Company, as elsewhere stated more fully in this bill.

34. Your orator shows unto your Honors, that this condition, to which the Corn Products Company is reduced, is in effect a form of liquidation by which the Trustees of the stockholders of the Corn Products Company hold its assets and prevent the distribution due the stockholders until they are ready to accept what should be given them by this Plan. That it is one of the most effective devices known by which the predatory corporations achieve their ends. That it is in effect in contempt of the law; that it preserves the skeleton, cheats all interested, and is calculated to enable the beneficiary to gradually dstroy its trade, and convince the stockholder of the company destroyed, that it had better accept what is offered than do worse.

That there is no Corn Products Company in actual, real or active existence; yet it has officers and directors as if it were living. They are simply the same officers and directors with trifling changes, with the Officers and Directors of the Corn Products Manufacturing Company and the Corn Products Refining Company and the New York Glucose Company; that it is absolutely an automaton, a machine standing in and worked from 26 Broadway, New York, and moving at command of the Standard Oil Company of New Jersey. The Corn Products Company has nothing of all that it ever had; it had extensive business offices in Chicago and New York,

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but none can now be found; it had many books and records, meetings of its Board of Directors, consultations, but none are now known; it had an active President and officers, many sales conducted, many telegrams, many agents and clerks; it made many purchases and sales; had many advertisements, notices of its actions or business, but now none; in short, everything is changed, it is entirely unknown to the trade, the very factories are destroyed, in many instances razed and junked, as more fully stated elsewhere in this bill, the factory sites are to be changed; its patents, trade secrets, goodwill, are gone to the Corn Products Refining Company. That the moneys of the Corn Products Company of 1906, at its death, amounted to nearly $3,000,000, with its bank account, with its surplus of working capital of over $4,000,000, and its earnings of the year 1905, which are not even reported, but moneys and surplus are all gone into the hands of the Corn Products Refining Company, and not even a memorandum or statement of their contents, much less of their disposition, can be learned by their stockholders or by your orator; information is expressly denied to them by the terms of the charter of the Corn Products Refining Company, which contains every refinement, every concealment needed to deny knowledge to the stockholders, and the Standard Oil Company represented by Bedford and his associates, hating publicity and quietly in possession and suppression of every evidence of the predatory schemes by which they have secured possession and enjoyment of this immense property; that the Corn Products Company only preserves its entity by its skeleton and only acts whenever necessary and called upon by the Standard Oil Company to enforce and verify
453 its death and comply with the appearances necessary to vest that company under the forms of law with its assets.

35. Your Orator alleges that in the attempt of obtaining information as to what has occurred since this Plan was proposed, he has been denied information at the offices at which the business of the said thirty-eight factories is being conducted; that nothing can be learned at the same; that the stockholders and your orator are only referred upon such application for information to men who are abroad, to men who cannot be found, or to men who profess to know nothing and who will reveal or state nothing which will enable your orator to learn what has occurred, except the bare facts that the Corn Products Company has disappeared and as stated elsewhere in this bill.

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36. Your Orator further alleges that the statements put forth by defendants touching the thirty-eight factories, their market, their products, their condition, their business done, are all misleading and substantially untrue and meant to deceive, and the market is so manipulated and the production so manipulated as to magnify the value of the said two and a half factories and to minimize and depreciates the value of the said thirty-five and one-half factories with a view to conceal the truth; and the Standard Oil Co. stands ready, your Orator charges, with its Protean changes to delay and defeat justice in the premises; so that there is no other remedy for your Orator to recover a part of what has been taken from him than the appointment of a Receiver and the recovery of the assets of the Corn Products Company from the hands of its enemies, who are also the enemies of the American people and have established one of the worst and most dangerous monopolies in the necessaries of life and have placed thereby a burden upon the back of every man in the nation.

37. That the result as to the public, of this transaction, is that all competition has been destroyed; and the Corn Products Refining Company is fully in possession of the mnufacture of glucose and by-products; and an absolute monopoly is thereby created, and all competition is destroyed. That the new company being now able to fix a price to the public at its pleasure, have already advanced the price of glucose so that the price which was in July, 1905, 15 cents a gallon, was advanced to 24 cents per gallon in July, 1906, and the public will be compelled to pay whatever the said Bedford and his Standard Oil friends choose to demand, and this is not a beneficial monopoly.

38. At the time your orator purchased said stock, as aforesaid, and for a long time prior thereto, and for a considerable period thereafter, the capital stock of the said Corn Products Company was duly listed upon the stock exchanges of New York, and Chicago, and other large cities, and was daily bought and sold, in open market, as one of the standard investments of the country, the market value thereof being as above stated, and the same was based upon the ownership of the properties above described, and other valuable properties and the profitable manufacturing business to the carrying on of which all the said properties were devoted by the parties aforesaid, for the benefit of the said Corn Products Company, and its stockholders, including your Orator, as aforesaid; and, in reliance upon the said facts, your orator

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acquired the said stock with a view of holding the same as an investment, and your Orator has ever since held, and still holds the same to the extent stated already in this bill 454 for such purpose, and at the time your Orator so acquired the same, and afterwards, the said Corn Products Company was paying regularly dividends to the holders of the said stock, including your Orator, on the par value of said stock, from the profits of the said business so controlled by the said Corn Products Company and so conducted and managed for the benefit of the said Corn Products Company, and its stockholders, including your orator; and it was the duty of the said Corn Products Company, and its officers and directors, to continue to so manage its affairs, including the said properties and business above mentioned, through its control thereof, as aforesaid, that such divi lends upon its stock should and would continue from year to year, and your Orator avers that if the said Corn Products Company, and its officers and directors, had, honestly and in good faith, continued its said business, and the management thereof, the said stock of your Orator, together with the stock of other stockholders in said Corn Products Company, not parties to said conspiracy, would still be earning and paying such dividends, and now be worth one hundred ($100) dollars per share; but, instead of that now being the case, your Orator avers that by reason of the bad faith, and misconduct, of the officers and directors of the said Corn Products Company, and others, pursuant to and as a part of the said conspiracy, the entire stock of the said Corn Products Company has, by reason of the said conspiracy and the said wrongful conduct, pursuant thereto, ceased to be a listed stock, and ceased to pay or earn dividends, and its value has thus been entirely destroyed, the said conspirators having fraudulently caused the same to be dropped from the list of the said stock exchanges, and have fraudulently stopped the payment of dividends thereon pursuant to said conspiracy, and are now managing all of the said properties in the exclusive interest of said conspirators, and in total disregard of the rights of your Orator as the owner and holder of the said stock, and in total disregard of all the rights of the holders and owners of the stock of the said Corn Products Company, other than said conspirators.

39. Your Orator further represents that, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, said conspirators are now planning and arranging to cause all of the said properties and the said business to be trans-

ferred and conveyed to the said Corn Products Refining Company, or to the aforesaid defendants or others, and thus permanently destroy the value of your Orator's said stock and the value of the other stock of the said Corn Products Company held or owned by persons or parties other than said conspirators, and your Orator brings this Bill of Complaint not only for the benefit of your Orator, but also for the benefit of the holders and owners of the stock of the said Corn Products Company, in the same situation as your Orator, and said other holders and owners of the said stock are hereby invited to come in as co-complainants with your Orator in this Bill of Complaint, and to share in the benefits of whatever relief may be obtained under or by virtue of this suit, upon contribution of their pro rata share of the expenses thereof.

Amended bill of complaint, filed Oct. 28, 1907.

40. Your Orator is informed and believes, and so charges the fact to be, that the stock of said thirty-five and one-half companies and factories, and with the other properties and assets of the Corn Products Company, are now about to be transferred and conveyed to the said Corn Products Refining Company, or other parties, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, and will be so transferred and conveyed unless the said conspirators, hereinafter made defendants to this Bill of Complaint, be restrained from so doing, or causing the same to be done, by the order 455 of this court, thereby working irreparable injury to your orator, and to the other stockholders of the said Corn Products Company, not parties to said conspiracy.

41. Your Orator further represents that the officers of said Corn Products Company are as follows, namely: J. A. Moffett, President, W. J. Matthiessen, Vice President, and F. T. Fisher, Treasurer; and the Directors of said Corn Products Company are as follows, namely; Charles L. Glass, William J. Calhoun, W. H. Nichols, Joy Morton, W. J. Matthiessen, F. Q. Barstow, J. A. Moffett, Edward T. Bedford, T. B. Wagner, William W. Heaton, F. T. Fisher and William C. Sherwood; and your Orator is informed and believes and so charges the fact to be that all the officers and directors of the said Corn Products Company are either parties to the said conspiracy or so interested with said conspirators that none of them will take any steps to prevent the carrying out of the said conspiracy for the fraudulent purposes aforesaid; that they are really acting as nominal directors of an automaton without any initiative and absolutely subject to

Amended bill of complaint, filed Oct. 25, 1907.

the control and orders of the Standard Oil Company of New Jersey in which many of them are Directors and Officers or clerks and agents or attorneys, as elsewhere stated; and said Corn Products Company is really serving its enemies and in a state of suspended animation, as elsewhere stated in this bill.

42. Your Orator further represents that the said Corn Products Refining Company is a giant pool, and trust, and combine, formed by said conspirators for the purpose of unlawfully regulating and fixing and controlling the price of glucose and grape sugar, and other products, all of which are articles of merchandise and commodities manufactured and sold in this state, and through the United States; that the names of the persons forming such pool, trust, and combine, other than these hereinbefore mentioned, are now unknown to your orator, and your Orator has not been able after diligent inquiry, to ascertain the same, but your Orator is informed and believes, and so charges, that all the persons above named, including the said officers and directors of the said Corn Products Company, are parties thereto, or interested therein, together with others unknown to your Orator; that said pool, trust and combine is to be accomplished, and carried out, and made effectual for the purposes aforesaid, under the forms of the law, namely: in and through such corporation under the name of the said Corn Products Refining Company; that the parties organizing, creating, promoting and managing or interested in the said pool, trust and combine, are now perfecting their arrangements, with the intent and purpose of unlawfully monopolizing, controlling, regulating and fixing the price of glucose and grape sugar and by-products within the State of Illinois, and throughout the United States, and for such fraudulent and unlawful purpose, as well as for the further purpose of defrauding your Orator of your Orator's said stock and defrauding other holders of the stock of said Corn Products Company similarly situated with your Orator, have already arranged to obtain control of substantially all the corporations and individuals heretofore engaged in the manufacture and sale of said commodities throughout the United States, and the said Corn Products Refining Company will, pursuant to said conspiracy, and for the fraudulent purposes aforesaid, unlawfully acquire and now hold complete control of the said corporations and individuals, and of the manufacture and sale of the said products, throughout the United States, unless re-

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trained from so doing by the order or decree of this Honorable Court; that the purpose and intent of the said pool 56 and combination, and of the said parties forming the same, or interested therein, jointly and severally, and especially of the Standard Oil Company, is to create a trust n, and a complete monopoly of, the said articles and commodities, and give to the Corn Products Refining Company, s the representative and embodiment of such trust, and pool, nd combine, the power to regulate and fix, and absolutely ontrol both the supply and the price of said articles and commodities, in the state of Illinois, and throughout the United States, amounting now in the aggregate to several billions of ounds annually and consuming many millions of bushels of orn, annually; that said pool and trust and combine, and the ffect, intent and purpose thereof, and the intent and purpose of the parties forming the same, or interested therein, s aforesaid, is in direct violation of the laws of this state, nd in violation of the statutes of this state in and for such ase made and provided, and for the purpose and plan of he said pool, trust and combine, and of said parties forming he same, or interested therein, is to swallow up and merge in he said Corn Products Refining Company, all the organizaions and plants in the United States, heretofore engaged r used in the manufacture or sale of said articles and commodities, or any of them, issuing to the said organizations eretofore so engaged stock in the said Corn Products Reining Company to hereby perfect its control of said organiation, and, where this method fails, to buy such organizations nd plants for cash or its equivalent, and, in any event, to hus merge and swallow up all the said organizations and lants, including the said Corn Products Company, in said ool, trust and combine, thus leaving to your Orator, and ther stockholders similarly situated, the option only of articipating in such unlawful trust, pool and combine, or ubmitting to the destruction of the stock so held by your rator, and thers similarly situated in said Corn Products ompany, or the destruction of the value thereof, and your rator charges that the officers and directors, and majority tockholders of the said corporations, defendants herein amed, are actively, and knowingly, and unlawfully, aiding nd participating and joining in, said trust, pool and combine, and preparing fraudulently and unlawfully to sell and ransfer all the said plants and properties of the said Corn Products Company to the said Standard Oil Company or to

Amended bill of complaint, filed Oct. 25, 1907.

the said Corn Products Refining Company representing said Standard Oil Company, for the unlawful and fraudulent purposes aforesaid, and will so do unless restrained therefrom by the order or decree of this Honorable Court.

43. Your Orator further charges that the forming and carrying out of the said pool, trust and combine, in and by the formation and action of the said Corn Products Refining Company, pursuant to said conspiracy, is an unlawful and fraudulent stock-jobbing scheme, and frenzied finance, upon the part of the said conspirators, for the purpose of fleecing the public, as well as your Orator, and others similarly situated, in the devious ways and methods originating in Wall street, and practiced by financial pirates, constituting "the system" by which the public are fleeced and plundered, continually, and by which it is intended by said conspirators to freeze out and defraud your Orator, as the holder and owner of the said stock in the said Corn Products Company, and other holders of such stock, not parties to such conspiracy, all of which is contrary to equity and good conscience and in violation of the Common law and laws of this state.

44. Your Orator further represents that a part and parcel of the plan of said conspirators, in carrying out the said conspiracy, is to dismantle and destroy such of said plants
457 as are now yielding profits applicable to the payment of dividends on the said stock belonging to your Orator, and others similarly situated, and build up and operate other plants for the manufacture and sale of said products, from the earnings of which dividends will be paid to said conspirators, exclusively, and not to your Orator, or others similarly situated, all of which is pursuant to said conspiracy and for the fraudulent purposes aforesaid, there being now no occasion for the sale or transfer of any of the plants, controlled, aforesaid, heretofore, by said Corn Products Company, and from the net earnings of which plants dividends have heretofore been paid, and ought to continue to be paid to the holders of the stock of said Corn Products Company, including your Orator, and there is now no occasion or excuse for the dismantling or abandonment, or destruction, of any of the said plants, but it is to the interest of the public and to the interest of your Orator, and other stockholders of the said Corn Products Company, that all of the said plants continue a separate existence and business, and carry on the same, without becoming merged and swallowed up in the

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said Corn Products Refining Company constituting the said pool, trust and combine, as aforesaid, for the manufacture of the said products has already become profitable, and is becoming more profitable every year, and all that prevents such profitable conduct of said business, for the benefit of your Orator, and others interested therein, is the fraudulent conspiracy aforesaid, and the said unlawful action and conduct of the parties thereto, pursuant to the conspiracy aforesaid, and to the end that such fraud may be prevented, your Orator is advised and believes, and so charges, that a receiver should be appointed by this Honorable Court of the said Corn Products Company, and its property, and, particularly, of the said plants thirty-five and one-half lately owned and held in the name of and operated by the said Corn Products Company, in Chicago, Illinois, and in Peoria, Illinois, and elsewhere, and that said plants be managed and operated by said receiver, under the orders and directions of this Honorable Court, pending the hearing of this cause, and the said conspirators thereby ousted from the possession or control thereof, and a reorganization had of the said Corn Products Company, and of the several corporations heretofore controlled by said Corn Products Company, under the orders and directions of this Honorable Court, and that said conspirators, including said Corn Products Refining Company be enjoined from paying any dividends and from making, or causing to be made, any sale, or transfer, or conveyance, of the said properties, or plants, or any or either of them, or any part thereof, to said Corn Products Refining Company, or any other or others of said conspirators, or to other corporations or persons.

45. Your Orator further represents and charges that all the acts of the said conspirators above named, or referred to, and of said pool and trust and combine, and of the parties forming or interested therein, have been and are with the fraudulent intent and purpose to thereby effect a combination of many millions of dollars of capital, and skill, and firms, and corporations, and individuals, to limit and control the production of glucose, and grape sugar, and other commodities, and regulate, and fix, and control, and change, at the will of said conspirators, the price of the some, and to prevent competitions in the manufacture and sale of such products, all of which is in violation of the Statute of Illinois entitled: "An Act to provide for the punishment of persons, copartnerships or corporations forming pools, trusts and com-

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bines, and mode of procedure and rules of evidence in such cases," approved June 11, 1891, in force July 1, 1891, and of other statutes of said state and with the intent and pur-
458 pose on their part to place the control, of such products in the hands of the said trust, the said Corn Products Refining Company, and thereby control the price and supply and manufacture thereof, in violation of the said Statute of the State of Illinois, and in violation of the common law of the State, and its Statutes, in and for such case made and provided.

46. Your Orator further represents that the glucose business has grown to enormous proportions in this country, and its products are everywhere in use, and of vast commercial importance, in their varied and manifold uses, and in carrying on of such business great skill and vast capital are employed and required, and it is for the interest of the public that competition be unrestrained and uneffected by such pools, and trusts, and combines, as the said Corn Products Refining Company, it not being an easy matter for persons or corporations to go into and engage in such business, as it requires considerable time and much capital to erect plants for the same, as many of the most important processes are patented and owned or controlled heretofore by the said several corporations above named, other than the said Corn Products Refining Company, and the Standard Oil Company aforesaid, and it requires skill and experienced men to erect and operate such plant, and the supply of such men is limited, and not equal to the public demand, and it will be impossible to compete with the Standard Oil Company, or its agents or its agent said Corn Products Refining Company in such business, in the State of Illinois, or elsewhere in the United States, unless such conspirators be prevented from carrying out their conspiracy aforesaid, and, if such conspiracy be so carried out, the said property of your Orator and other similarly situated will be entirely destroyed, and the said pool, trust and combine, would be in complete control of said products throughout the State of Illinois, and throughout the United States, and all competition therein thus prevented.

47. Your Orator further represents that said pool, trust and combine, formed under the name of the said Corn Products Refining Company, cannot succeed in its said fraudulent purposes, unless it secures control of the said plants located in Illinois, and a prevention

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of its control thereof will prevent the carrying out of the conspiracy aforesaid, as the State of Illinois is the center of the corn belt of the United States, and if free competition be maintained in this State, in the manufacture and sale of such products, the welfare of the entire public will thus be promoted, and the loss of the stock of your Orator, and others similarly situated, in the said Corn Products Company, will be, at the same time, thus prevented, and your Orator charges that whatever may be the form, or forms, adopted and to be adopted, or pursued, by said conspirators, forming or constituting the said Corn Products Refining Company, the substance and effect thereof is, and will remain, a united control of the plants and corporations of this country engaged in the manufacture or sale, of said products, by and in the name of the said Corn Products Refining Company; and the formation and operation of the said Corn Products Refining Company, by said conspirators, is simply a mode of union after the manner of the Standard Oil Company, a part of that gigantic monopoly, and constituting a giant monopoly for
459 the purpose of controlling, fixing, and regulating, both the supply and the price, of glucose, and its varied by-products, syrups and sugar, throughout the State of Illinois, and throughout the United States.

48. Your Orator alleges, that the action and policy of the Standard Oil Company by which they have been enabled to destroy the competition and create monopolies in and control many of the leading products of the country, has been in great part effected by secret and criminal rebates, and other advantages given to said Standard Oil Company by the railroad companies of the United States to the exclusion of independent competition, and to the destruction of the capital engaged in such competition; and your Orator alleges that such secret and criminal contracts and rebates, and other misconduct of the said Standard Oil Company will attend the future control and management of the Corn Products Company, and of said Corn Products Refining Company and of said Corn Products Manufacturing Company, and of said thirty-five and one-half factories by whatever agents they are managed under the Standard Oil Company and its allies, if not ousted by the order of this court.

49. Your Orator further alleges and shows unto your Honor that said Standard Oil Co. and its agents, individuals and corporations, the defendants, who have secured the man-

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agement and control of the property and assets of the Corn Products Co., cannot be trusted with the said management and control, as assured to them by this Plan; yet they are past-masters in the manipulation of market and manufacture to suit their own interests and will destroy and crush the opposition of your Orator and other stockholders who have not surrendered their property under this plan, by all methods open to corrupt Trustees, and will commit every offense known to predatory corporations of which this defendant, the Standard Oil Company, is easily the first,—offenses against the laws meant to protect the rights of your Orator and of the People of this country against said malefactors, unless prevented by the action of this court. Your Orator shows that said Trustees, the defendants, have already destroyed and junked two or more of said thirty-five and one-half factories and are now engaged in completing the destruction of the factory in Peoria, which was held and regarded as one of the most profitable and successful factories engaged in said manufacture and had cost in its construction more than a million dollars—a factory for which the Corn Products Company had paid more than $2,000,000 in 1902, and the Corn Products Manufacturing Company in August, 1897, had paid nearly two million dollars therefor; and your Orator charges that said factory was destroyed in order to give to him and the objecting stockholders an object lesson of the character and determination of the Standard Oil Company and its co-defendants, and of the policy which they would mercilessly pursue as Trustees.

50. Your Orator further shows unto your Honors, that the Standard Oil Company through its agent, the Corn Products Refining Company, continues to pay dividends, in favor of itself, and others in its interests; that a dividend of 1% was declared in July, 1907, and a further dividend of 1¾% had just been declared payable in October, 1907—but said dividends were payable upon the Preferred stock of said company, but none to the stockholders of the Corn Products Company, owners of the thirty-five and one-half factories,

but payable only to the owners of the two and a half fac-
460 tories, which never before are known to have paid dividends to their stockholders, or are known to have shown net earnings as elsewhere more fully stated in this bill; dividends from pretended earnings of the two and a half factories and their companies holding the same, of which the contribu-

tion to this Plan was the said indebtedness of over $3,250,000 created in their short experience. Amended bill of complaint, filed Oct. 25, 1907.

51. Your Orator further shows that out of the earnings for the year ending February 28, 1907, reported at $6,500,000, not a dollar has been divided to your Orator or the other stockholders of the stock of the Corn Products Company objecting to this Plan—but some millions of dollars are left undivided in the Treasury; and this under color of various pretenses hinted at in said report—every one of which your Orator alleges were and are untrue and made to suit the ends of the Standard Oil Company; that the real truth is that your Orator and other objecting stockholders are to be punished in this amongst many other methods, by this master monopoly until driven to consent to their new monopoly, condemned as a crime by the common law and the Statutes of this State.

52. That to further show the inequitable character of the management of our Trustees who owned the two and a half factories and put them into this Plan at a profit of nearly $15,000,000, and pretend to make dividends out of their earnings while denying dividends to the owners of the thirty-five and one-half factories, your Orator states unto your Honors the following facts, namely: That the grinding capacities of the thirty-five factories of the Corn Products Company are greater than those of the two and a half factories by five fold; that they had all the experience in the manufacture of glucose, starch and by-products, trade secrets and patents, and had always been successful with immense earnings and dividends as elsewhere shown in this bill; that the market of starch was chiefly in the hands of said Corn Products factories; that the market of the said Kingsford Company alone in the starch business exceeded that of any other factory and was preferred in the market to all others and in every household and with a profitable business for sixty years past, entirely unequaled and amounting to at least $500,000 per year, and certainly worth at a reliable estimate in annual profits far more than that of the two and a half factories put in by said Standard Oil Company.

53. That the management of the business and market of the thirty-five and a half factories of the Corn Products Company cannot be safely entrusted to the Standard Oil Company, because it is a great monopoly and therefore a great and distinguished offender, being prosecuted as guilty of criminal offenses by the National Government, and declared, con-

Amended bill of complaint, filed Oct. 25, 1907.

demned, and adjudged guilty of great offenses against the policy and interests of the American People; and that the management and control of the assets of $80,000,000 of the Corn Products Company while under control of the said Standard Oil Company, are, and will be, like that of the management and control of the Standard Oil Company itself, and of the many other companies, and corporations, conducted from its office in 26 Broadway, New York, in contempt of and in conflict with the laws of this state; and to entrust them with the same is to hand over the ownership, management and control of nearly forty factories of which the greater and more important are situated in the State of Illinois, and if allowed to remain under such control will be in the hands of criminals as held and adjudged by the laws of this state.

461 Sec. 54. Your Orator further alleges and shows unto your Honors, that said Standard Oil Company of New Jersey and said Corn Products Refining Company, defendants herein, never were authorized and could not lawfully buy and cannot lawfully hold the said stock nor of any of said defendant corporations or their subsidiaries, or any part of the stock of the Corn Products Company, as elsewhere more fully set forth in this bill; that to buy and hold such stock was and is against the policy of the State of Illinois where the property and factories chiefly lie and where the companies to whom belonged said stock, and property are chiefly engaged in manufacturing said products; and your Orator alleges that the laws of said State forbid said corporations to buy and hold the stock of said Corn Products Company, or of any of said defendant corporations or of any of their subsidiaries.

Your Orator alleges that said purchases, sales and holdings of said Corn Products stock, or of any of said defendant corporations or their subsidiaries, by said Corn Products Refining Company and Standard Oil Company were ultra vires, because made to secure and tending to secure a monopoly of the manufacture and business, including the purchase and sale of glucose and by-products and starch in the United States.

Your Orator further alleges that the title of record is now in the Glucose Sugar Refining Company, known as the defendant Corn Products Manufacturing Company, of the six factories above described in this bill, and described as "formerly owned and operated by the Glucose Sugar Refining

Company of New Jersey;" and the said factories and plants are now operated in the name of the said Corn Products Manufacturing Company by which name the Glucose Sugar Refining Company is now known; and the stock of the several companies owning said factories are now still standing in the name of the said Corn Products Manufacturing Company; and your Orator charges that they have never been transferred to and never were put in possession of, the Corn Products Refining Company, and are still owned and held as they were owned and held up to the formation of the Corn Products Company, so far as concerns the legal and equitable title to said factories and stocks; and whatever title or right is now owned, or can be claimed and held by the Corn Products Refining Company, is and must be derived from its ownership of the stock of the Corn Products Company, as elsewhere set forth in this bill; and that the plan has never been completely executed of merging, consolidating, or transferring the $80,000,000 of stock in the Corn Products Company, or of its title and right in said factories and all of them, including the whole of the thirty-five and one-half factories, and the companies owning the same; that said factories and stock have never been legally or equitably transferred or conveyed to the Corn Products Refining Company; and your Orator asks that the execution of said Plan may be stayed and enjoined as hereinafter set forth in the prayer of this bill; and your Orator charges that until such transfers have been made and such conveyances had of the legal title to said stock and of the possession of said factories, the said Plan of Merger or Consolidation in the Corn Products Refining Company is still executory and it is within the power of a court of equity to deal with the said property and with the whole transaction of which their sale and conveyances are a part, as an executory contract.

Amended bill of complaint, filed Oct. 25, 1907.

462 55. Your Orator alleges that the Standard Oil Company and its co-conspirators never have completely executed this plan, but have left the possession of the thirty-eight factories described in this Plan so that their possession is now in the hands of the Corn Products Manufacturing Company of New Jersey, as their agent, which now conducts and controls the manufacture in the several factories, in obedience to the orders of the Standard Oil Company; and the products thereof, now bear the brands of the Corn Products Manufacturing Company; and your Orator al-

Amended bill of complaint, filed Oct. 25, 1907.

received by the Corn Products Refining Company, or any of its agents, officers or representatives, from its business, from the manufacture and sale of any of the products of the said factories described in this bill and in this Plan, and claimed to be owned or controlled by said Refining Company, including all the receipts in the hands of said Refining Company or any of its agents or officers, or paid over and in the hands of said Standard Oil Company of New Jersey, and the finished or unfinished product of said factories of said Refining Company, or the moneys received from junking said factories, or otherwise, from the proceeds of the property of the Corn Products Company, may be impounded and placed in the hands of a Receiver appointed by this court, and that the said defendants and each of them may be enjoined from meddling with said moneys, and all and each of the same, and with said property, and from junking and destroying or disposing of the same, and especially may be enjoined from paying out the same upon dividends or otherwise, and in the payment of salaries or otherwise; and to that end there may be a reorganization of the said Corn Products Company, and of the said Corn Products Manufacturing Company, under the directions of this Honorable Court; and to the end that your Orator may have such other and further or different relief, in the premises, as equity may require. But your Orator expressly disclaims any right to any relief whatever under this bill and in this case except under and by virtue of the laws of the State of Illinois, alone, and hereby declares that he desires and seeks no decree whatever against said defendants to which he is not entitled under said laws and your Orator prays that a writ of summons in due form be issued by the clerk of this court directed to the Sheriff of the said County of Cook, commanding the said Sheriff that he summon the said defendants the said Standard Oil Company and the said Corn Products Company, and the said Corn Products Refining Company, and the said Corn Products

Manufacturing Company, the said Conrad H. Matthies- 464 sen, Charles L. Glass, William W. Heaton, Norman B.

Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford and E. F. Wemple, to be and appear before this Honorable Court and the term thereof to be begun and held in November, 1907, in the City of Chicago, in the County of Cook, in the State of Illinois, to then and

here answer this Bill of Complaint, as aforesaid, and abide by and perform the orders and decree of this court in this cause; and your Orator will ever pray, etc.

A. B. JOYNER,
Solicitor for Complainant.

465 And afterwards to-wit: on the 5th day of November, A. D. 1907, a certain petition was filed in the office of the clerk of said Court, in words and figures following to-wit: Petition, Filed Nov. 5, 1907.

466 State of Illinois, }
County of Cook. } ss.

IN THE SUPERIOR COURT OF COOK COUNTY.

In Chancery.

George F. Harding,
Complainant.
vs.
Standard Oil Company, of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford, E. L. Wemple and W. C. Sherwood,
Defendants.

G. No. 263,565.
T. No. 9,213.

PETITION FOR REMOVAL TO THE CIRCUIT COURT OF THE UNITED STATES, IN THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION THEREOF.

To the Honorable Judges of said Superior Court of Cook County, in Chancery Sitting:

Your petitioner, Corn Products Manufacturing Company, respectfully shows unto your Honors the following:

That at the time of the commencement of this suit the said

Affidavit of G. W. Powers.

true to the best of his knowledge, information and belief; that he makes this affidavit for and on behalf of the said Corn Products Manufacturing Company, and has full and true authority to make the same.

G. W. POWERS.

469 Subscribed and sworn to before me, a Notary Public in and for the County of Cook and State of Illinois, this 5th day of November, A. D. 1907.

(Seal)

E. F. HEYD,
Notary Public.

Petition of Corn Products Co. et al.

State of Illinois, } ss.
County of Cook. }

IN THE SUPERIOR COURT OF COOK COUNTY.

In Chancery.

George F. Harding,
Complainant,
vs.
Standard Oil Company, of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford, E. F. Wemple and W. C. Sherwood,
Defendants.

Gen No. 263,565.
Term No. 9,213.

Now come Corn Products Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford, E. F. Wemple and W. C. Sherwood, jointly and severally by James M. Sheean, their solicitor, and jointly and severally object to and except to and protest against the

risdiction of this Honorable Court, and appear specially and ecially only for the sole purpose of uniting, and they hereby verally do unite in the petition of the Corn Products Manufacturing Company, and consenting, and they do hereby 0 jointly and severally consent and petition that an order may be entered in the above entitled cause, transferring id cause to the Circuit Court of the United States, in and for e Northern District of Illinois, Eastern Division thereof, accordance with the prayer of the petition of said Corn oducts Manufacturing Company, one of the defendants in id cause, for the removal of said cause, and they jointly and verally say that the allegations contained in said petition are ue.

CORN PRODUCTS COMPANY,
CONRAD H. MATTHIESSEN,
CHARLES L. GLASS,
WILLIAM W. HEATON,
NORMAN B. REAM,
WILLIAM J. CALHOUN,
JOY MORTON,
BENJAMIN GRAHAM,
T. B. WAGNER,
H. G. HERGET,
THOMAS B. KINGSFORD,
W. H. NICHOLS,
EDWARD T. BEDFORD,
E. F. WEMPLE and
W. C. SHERWOOD.
By JAMES M. SHEEAN,
Their Solicitors.

Petition of Corn Products Refining Company.

471 State of Illinois, } ss.
County of Cook. }

IN THE SUPERIOR COURT OF COOK COUNTY.

In Chancery.

George F. Harding,
Complainant,
vs.
Standard Oil Company, of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford, E. F. Wemple and W. C. Sherwood,
Defendants.

Gen No. 263,565.
Term No. 9,213.

Now comes Corn Products Refining Company, by Moran, Mayer & Meyer, their solicitors, and objects and excepts to and protests against the jurisdiction of this honorable Court and appears specially and specially only for the sole purpose of uniting and it does hereby unite in the foregoing petition of Corn Products Manufacturing Company, and says that the allegations therein contained are true, and petitions and consents that an order may be entered in the above entitled cause transferring said cause to the Circuit Court of the United States for the Northern District of Illinois, Eastern Division thereof, in accordance with the prayer of the petition of said Corn Products Manufacturing Company, one of the defendants in said cause, for the removal of said cause.

CORN PRODUCTS REFINING COMPANY,
By MORAN, MAYER & MEYER,
Their Solicitors.

472 State of Illinois, }
County of Cook. } ss.

Petition of Standard Oil Company.

IN THE SUPERIOR COURT OF COOK COUNTY.

In Chancery.

George F. Harding,
Complainant,
vs.
Standard Oil Company, of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford, E. F. Wemple and W. C. Sherwood,
Defendants.

Gen No. 263,565.
Term No. 9,213.

Now comes Standard Oil Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, defendant herein, appearing specially and specially only by its solicitors, Alfred D. Eddy and Robert W. Stewart, and for the sole and single purpose of consenting that this case be removed to the Circuit Court of the United States, for the Northern District of Illinois, Eastern Division thereof, and expressly reserving to itself the right to make any and all objections to the jurisdiction of the Superior Court of Cook County, State of Illinois, in this case as to it, said Standard Oil Company, and also expressly reserving to itself the right to object to the jurisdiction of said United States Circuit Court over the person of this defendant by reason of said defendant not having been served with any process herein, consents that an order may be made in the above entitled cause, transferring said cause to the Circuit Court of the United States, for the Northern District of Illinois, Eastern Division thereof, in accordance with the prayer of the petition of Corn Products Manufacturing Com-

pany, one of the defendants in said cause for the removal of said cause.

STANDARD OIL COMPANY, *a New Jersey Corporation,*
By ALFRED D. EDDY and
ROBERT W. STEWART,
Its Solicitors.

Bond for removal. filed Nov. 5, 1907.

473 And on to-wit: on the 5th day of November A. D. 1907 a certain Bond was filed in the office of the clerk of said Court in words and figures following to-wit.

474 Know All Men by These Presents, That we, Corn Products Manufacturing Company, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, as principal, and National Surety Company, as surety, are held and firmly bound unto George F. Harding, jointly and severally, in the penal sum of One Thousand Dollars ($1,000.00), lawful money of the United States, for the payment whereof, well and truly to be made unto Said George F. Harding, his legal representatives and assigns, we bind ourselves, our respective successors, legal representatives and assigns, jointly and severally, firmly by these presents.

The Condition of the Above Obligation is Such, That Whereas, the said Corn Products Manufacturing Company has filed its petition in the Superior Court of Cook County, in the State of Illinois, for the removal of the cause therein pending, wherein George F. Harding is complainant and said Corn Products Manufacturing Company and others are defendants, to the Circuit Court of the United States, in and for the Northern District of Illinois, Eastern Division thereof, now if the said Corn Products Manufacturing Company shall enter in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division thereof aforesaid, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force and effect.

In Witness Whereof, the said Corn Products Manufacturing Company has caused these presents to be executed by its President and attested by its Assistant Secretary, under its

Bond for removal, filed Nov. 5, 1907.

orporate seal, and said National Surety Company has caused these presents to be executed by its attorney in fact, attested by its Secretary, under its corporate seal this Fifth day of November, A. D. 1907.

CORN PRODUCTS MANUFACTURING COMPANY,
By G W POWERS
Its President.

(Corn Products Manufacturing Co.
Incorporated 1897 N. J.)
Attest
P. H. MURPHY,
Assistant Secretary.

NATIONAL SURETY COMPANY,
By CHARLES L. CRAIN (or Crain)
Its attorney in Fact.

Attest
WALTER FARADAY,
Resident Assistant Secretary.
(National Surety Company,
Incorporated 1897, New York.)

475 (Endorsed on the back.) Gen. No. 263565 Term No. 9213. Superior Court of Cook County. George F. Harding vs. Standard Oil Company of New Jersey, et al. Bond for Removal. Filed Nov. 5, 4-10 P. M. 1907. Charles W. Vail, Clerk. Copy.

476 And afterwards to-wit: on the 6th day of November A. D. 1907 a certain notice was filed in the office of the clerk of said court in words and figures following to-wit:

Notice, filed Nov. 6, 1907.

477 State of Illinois }
County of Cook. } ss.

IN THE SUPERIOR COURT OF COOK COUNTY.

In Chancery.

George F. Harding,
Complainant,
vs.
Standard Oil Company, a New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford, E. F. Wemple and W. C. Sherwood,
Defendants.

Gen No. 263,565.
Term No. 9,213.

To: A. B. Joyner, Esq., Solicitor for complainant.

Please Take Notice that on Wednesday, the 6th day of November, 1907, at the hour of 10 O'clock, A. M., or as soon thereafter as counsel can be heard, before his Honor, Judge Ball, in the court room usually occupied by him, I shall present the petition of Corn Products Manufacturing Company, praying for a removal of the above entitled cause to the United States Circuit Court, in and for the Northern District of Illinois, Eastern Division thereof, a copy of which petition is herewith served upon you, at which time and place you may appear if you see fit.

JAMES M. SHEEAN
Solicitor for Corn Products Manufacturing Company.

Received a copy of the above and foregoing Notice this 5th day of November, A. D., 1907.

.....

Affidavit of service attached to notice of motion to present petition for removal.

Notice filed Nov. 6, 10-12, 1907.

478 State of Illinois, }
County of Cook. } ss.

Affidavit of Edwin D. Lawlor.

Edwin D. Lawlor, being first duly sworn, deposes and says that he served the above notice on the said A. B. Joyner, Esq., by leaving a copy of the same with the said A. B. Joyner, Esq., the fifth day of November, A. D. 1907, before the hour of 4 P. M.

Signed EDWIN D. LAWLOR

Subscribed and sworn to before me this 5th day of November, A. D. 1907.

KATHRYN MACDONALD
(Notarial Seal) *Notarial Public.*

(Endorsed on the back) G. No. 263565—T. No. 9213. Superior Court of Cook County. George F. Harding v. Standard Oil Co. et al. Notice of presenting petition to remove &c. Filed Nov. 6, 10-12 A. M. 1907. Charles W. Vail, Clerk. James M. Sheean.

479 And on to-wit: on the 6th day of November, A. D. 1907, a certain plea was filed in the office of the clerk of said Court, in words and figures following to-wit:

Plea, filed Nov. 6, 1907.

480 State of Illinois }
County of Cook. } ss.

IN THE SUPERIOR COURT THEREOF.

George F. Harding,
ats.
Standard Oil Company, of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, all corporations of the State of New Jersey, C. H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, H. G. Herget, Thomas P. Kingsford, W. C. Sherwood, E. T. Bedford, W. H. Nichols and E. P. Wemple.

The plea of Standard Oil Company, a corporation organized and existing under and by virtue of the laws of the State

Plea, filed Nov. 6, 1907.

of New Jersey, defendant, appearing specially by Alfred D. Eddy and Robert W. Stewart, its solicitors, to the Bill of Complaint of George F. Harding, complainant.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged and especially limiting and confining its appearance to the sole purpose of filing this plea and objecting to the jurisdiction of this Court in the premises, doth plead thereunto and for plea, says:

That said defendant company was and is a corporation aggregate, organized and existing under and by virtue of the laws of the State of New Jersey; that the location of its principal office and place of business has been at all times and is now within the City of Bayonne in the State of New Jersey, and it never had, nor has any office or place of
481 business in the State of Illinois. That said defendant company did not, and does not, reside in and was not found in said State of Illinois, and was not served with process in said State of Illinois, and that said defendant company at the time of the commencement of this suit theretofore and from that time hitherto, has resided in the city of Bayonne in the State of New Jersey, and that it is a corporation whose legal and actual status is in the State of New Jersey, and not elsewhere. That neither its President, nor its Secretary, nor its Treasurer, nor any of its Directors, nor any of its officers, cashiers, clerks or agents reside, nor have at or since the commencement of this suit resided in the State of Illinois, nor have any of them had any place of business there, at, or since, said time. That it has not authorized any agent, officer, clerk, cashier, attorney or councellor, or anyone else to appear for it in this suit, except for the special purpose of objecting to the jurisdiction of this Court. That George W. Stahl, upon whom summons in this cause was served, is not, and was not at the time of the service of said summons, and never had been, the agent of this defendant, as set forth in the Sheriff's return; and that he the said George W. Stahl, is not and was not at the time of the service of said summons, nor has he ever been an officer, clerk, secretary, superintendent, general agent, cashier, principal director, engineer, conductor, station agent or any agent of said defendant.

All which matters and things this defendant avers to be

Plea. filed Nov. 6, 1907.

true and pleads the same to the whole of the said bill and demands the judgment of this Honorable Court, whether it ought to be compelled to make any answer to the said Bill of Complaint, and prays to be dismissed hence with its reasonable costs in this behalf most wrongfully sustained.

ALFRED D. EDDY &
R. W. STEWART,
Solicitors for defendant.

Affidavit of John D. Archbold.

482 State of Illinois }
County of Cook. } ss.

IN THE SUPERIOR COURT THEREOF.

George F. Harding,
ats.
Standard Oil Company, of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, all corporations of the State of New Jersey, C. H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. C. Sherwood, E. T. Bedford, W. H. Nichols and E. P. Wemple.

In Chancery.
Genl. No. 263565
Term No. 9213.

State of New York }
County of New York } ss.

John D. Archbold being first duly sworn, makes oath and says that he is the Vice President of Standard Oil Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, defendant in this cause, and that the plea hereunto annexed, is true in substance and in fact.

JOHN D. ARCHBOLD.

Subscribed and sworn to before me this 31st day of October, A. D. 1907.

A. T. DOREMUS,
Notary Public.

(Seal)
Notary Public,

483 (Endorsed on the back.) State of Illinois, County of Cook, ss In the Superior Court thereof. George F. Harding ats. Standard Oil Company of New Jersey, et al. In Chancery, Gen. No. 263 565 Term No. 9213. Plea of Standard Oil Company of New Jersey. Filed Nov. 6, 9-34 A. M. 1907. Charles W. Vail, Clerk. Alfred D. Eddy Robert W. Stewart, Solicitors for Standard Oil Company of New Jersey.

Certificate Clerk of Superior Court Cook County.

484 State of Illinois, }
County of Cook. } ss.

I, Charles W. Vail, Clerk of the Superior Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the record in a certain cause pending in said Court on the Chancery side thereof, wherein George F. Harding is complainant and Standard Oil Company, et al defendants.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Chicago, this 6th day of November, A. D. 1907.

CHARLES W. VAIL,
Clerk.

(Seal)

(Endorsed) 28865 Transcript. Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Nov. 6, 1907, H. S. Stoddard, Clerk.

485 United States of America
Northern District of Illinois,
Eastern Division.

Order of Nov. 6, 1907.

In the Circuit Court of the United States
In and For the Northern District of Illinois,
Eastern Division Thereof.

Wednesday, November 6, 1907.

Present Hon. Kenesaw M. Landis, District Judge.

George F. Harding,
Complainant,
vs.
Standard Oil Company, of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford, E. F. Wemple and W. C. Sherwood,
Defendants.
No. 28865.

Upon motion of the Solicitor for the Corn Products Manufacturing Company, one of said defendants, leave is hereby given to file, and there is hereby ordered filed herein, a transcript of the record of the Supreme Court of Cook County, in the case of George F. Harding v. Standard Oil Company, et al, being case number 263, 565 of said Superior Court of Cook County, and

It Is Hereby Further Ordered that the further prosecution of said George F. Harding of said suit in said Superior Court of Cook county, Illinois, shall be and the same is hereby stayed, and said George F. Harding, his agents, representatives, counsel, solicitors and attorneys are hereby enjoined from proceeding further with the prosecution of said case in said State Court; all until the further order of this court.

Entered by Judge Landis Nov. 6, 1907.

Petition of Corn Products Mfg. Company.

486 United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES

In and For the Northern District of Illinois,

Eastern Division Thereof.

George F. Harding,
Complainant,
vs.
Standard Oil Company, of New Jersey, Corn Products Company, Corn Products Refining Company, Corn Products Manufacturing Company, Conrad H. Matthiessen, Charles L. Glass, William W. Heaton, Norman B. Ream, William J. Calhoun, Joy Morton, Benjamin Graham, T. B. Wagner, H. G. Herget, Thomas P. Kingsford, W. H. Nichols, Edward T. Bedford, E. F. Wemple and W. C. Sherwood,
Defendants.
} G. No. 28,865.

Now comes said Corn Products Manufacturing Company and submits the following in support of and in conjunction with the supplemental to the petition originally filed by your petitioner in the Superior Court of Cook County, Illinois, on the application to remove said cause to this Court, and which petition is a part of the transcript of the record filed herein:

Your petitioner says that said Conrad H. Matthiessen, William W. Heaton, Thomas P. Kingsford, W. H. Nichols and E. L. Wemple (being the same person who is named and styled in said bill as E. F. Wemple), defendants in said suit, were at the time of the commencement of said suit and continuously since have been and still are, respectively, citizens and residents of the State of New York; that Edward T. Bedford and Norman B. Ream, defendants in said suit, were at the time of the commencement of said suit and continuously since have been and still are, respectively, citizens and

Petition of Corn Products Mfg. Company.

residents of the State of Connecticut; that W. C. Sher-
487 wood and Benjamin Graham defendants in said suit, were at the time of the commencement of said suit and continuously since have been and still are, respectively, citizens and residents of the State of New Jersey; that Charles L. Glass, William J. Calhoun, Joy Morton and T. B. Wagner, defendants in said suit, were at the time of the commencement of said suit and continuously since have been and still are, respectively, citizens of the State of Illinois, and residents of the City of Chicago in said Eastern Division of said Northern District of Illinois; that H. G. Herget, defendant in said suit, was at the time of the commencement of said suit, and continuously since has been and still is a citizen of the State of Illinois, and a resident of Pekin, in said State of Illinois.

CORN PRODUCTS MANUFACTURING CO.
By G. W. POWERS,
President.

(Seal)

Attest:
P. H. MURPHY,
Assistant Secretary.

JAMES M. SHEEAN,
Solicitor for said Corn Products Manufacturing Company.

State of Illinois, }
County of Cook. } ss.

Affidavit of G. W. Powers.

G. W. Powers, being first duly sworn, upon oath deposes and says that he is the President of said Corn Products Manufacturing Company; that he has read the above and foregoing statement, subscribed by affiant as President, and attested by P. H. Murphy, as Assistant Secretary; that he is the duly authorized agent of said Corn Products Manufacturing Company in this behalf; that he knows the contents of the above and foregoing statement; that said statement is true to the best of his knowledge, information and belief, that he makes this affidavit for and on behalf of said Corn Products Manufacturing Company, and has full and true authority to make the same.

G. W. POWERS.

Subscribed and sworn to before me, a Notary Public, in and for the County of Cook and State of Illinois, this 6th day of November, A. D. 1907.

E. F. HEYD,
(Seal) *Notary Public.*

(Endorsed) Filed Nov. 6, 1907, H. S. Stoddard Clerk

488 (Endorsed on the back.) No. 28865 United States Circuit Court, Northern District of Illinois—Eastern Division. George F. Harding vs. Standard Oil Company, et al. Amendment or Supplement to petition for removal. Compared. Copy. Filed Nov. 6, 1907.

Certificate of evidence, filed April 30, 1908.

489 And the foregoing was all the evidence offered or heard or considered by the court, in said hearing and proceedings aforesaid.

And, inasmuch as the foregoing does not otherwise fully appear of record in said cause, the said respondents present to the court this Certificate of Evidence to be signed and filed and made a part of the record therein which is accordingly done on this 30th day of April, A. D. 1908.

KENESAW M. LANDIS (Seal)
Judge.

(Endorsed) Filed Apr. 30th, 1908. H. S. Stoddard, Clerk.

490 And on to-wit, the tenth day of January, 1908, come George F. Harding, George F. Harding, Jr., A. B. Joyner and Wm. J. Ammen, and filed in the clerk's office of said court, their certain petition for appeal and assignment of errors in words and figures following to-wit:

PETITION FOR APPEAL AND ASSIGNMENT OF ERRORS.

Petition for appeal. Filed Jan. 10. 1908.

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and For the Northern District of Illinois,

Eastern Division thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } In Chancery. No. 28695.

In the matter of the rule entered Nov. 4, 1907, that George F. Harding, and his solicitor, A. B. Joyner, show cause why the suit of said Harding in the Superior Court of Cook County should not be enjoined, and be ordered to dismiss the same; and also in the matter of the rule entered Nov. 12, 1907, that George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, show cause why they should not be attached for contempt for violating the temporary stay and restraining order entered on June 8, 1907 and the decretal order entered under date of December 13, 1907.

Now come the said respondents, George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen, feeling themselves aggrieved by the entry of the said rules, aforesaid, respectively, and by the entry of the said decretal order of December 13, 1907 said respondents jointly and severally, pray an appeal from said decretal order of
491 December 13, 1907, to the United States Circuit Court of Appeals, in and for the Seventh Judicial Circuit, for the reasons specified in the assignment of errors which is filed herewith; and these respondents pray that such appeal be allowed and that a transcript of the record, proceedings and papers upon which the said decretal order of December 13, 1907, was made, or entered, may be sent to the United

Petition for appeal, filed Jan. 10, 1908.

States Circuit Court of Appeals in and for the Seventh Judicial Circuit.

GEORGE F. HARDING,
GEORGE F. HARDING, JR.
A. B. JOYNER,
WM. J. AMMEN,
Respondents.
By WM. J. AMMEN,
their solicitor.

WM. J. AMMEN,
Solicitor for respondents.

United States of America,
Northern District of Illinois,
Eastern Division, } ss.

IN THE UNITED STATES CIRCUIT COURT,

In and For the Northern District of Illinois,

Eastern Division thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.*
} In Chancery, No. 28695.

In the matter of the rule entered Nov. 4, 1907, that George F. Harding, and his solicitor, A. B. Joyner, show cause why the suit of said Harding in the Superior Court of Cook County should not be enjoined, and be ordered to dismiss the same; and also, in the matter of the rule entered Nov. 12, 1907, that George F. Harding , George F. Harding, Jr., William J. Ammen and A. B. Joyner, show cause why they should not be attached for contempt for violating the temporary stay and restraining order entered on June 8, 1907, and the decretal order entered under date of December 13, 1907.

Assignment of errors, filed Jan. 10, 1908.

492 ASSIGNMENT OF ERRORS.

And now come said respondents, George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen and severally say:

That in the proceedings aforesaid, and in the said decretal order of this court made and entered of record under date of December 13, 1907, on the motion or petition of the Corn Products Refining Company, one of the defendants in said cause, and the rule entered on November 4, 1907, in said cause, and the further rule entered on November 12, 1907, in said cause, there is manifest error in this, to-wit:

1. This court was without jurisdiction over these respondents, severally, and without authority or power, under the law, to enter the said order of December 13, 1907, and this court erred in assuming jurisdiction and authority and power to enter the said order against these respondents, respectively, neither of these respondents being parties plaintiff or defendant, or other wise, in the above entitled cause.

2. The several findings in the said order of December 13, 1907, are, respectively, contrary to the evidence before the court, and, contrary to the law.

3. That said rule entered in said cause on November 4, 1907, was not within the jurisdiction of this court in said cause, and was unauthorized by law, neither of the said parties against whom said rule was entered being parties to this cause.

4. The said rule entered on November 12, 1907, in said cause was not within the jurisdiction of this court, in said cause, and was unauthorized by law, neither of the parties against whom the said rule was entered being a party to this cause.

5. The finding in the said order of December 13, 1907, that said respondents, respectively, knowingly or wilfully violated the order of this court entered on June 8, 1907, in said cause, is contrary to the evidence before the court, and contrary to the law, and was wholly unauthorized as against any of these respondents.

493 6. The finding in the said order of December 13, 1907, that the further prosecution of the said suit of George F. Harding vs. Standard Oil Company of New Jersey, et al and the institution by these respondents, or either of them, of any

Assignment of errors, filed Jan. 10, 1908.

action like or similar to the above entitled cause, should be enjoined, was contrary to the evidence and contrary to the law.

7. The said order enjoining these respondents, respectively and their agents, attorneys, solicitors and representatives from further prosecuting or taking any steps or proceedings in said cause of George F. Harding vs. said Standard Oil Company, and others, was contrary to the evidence, contrary to the law, and without jurisdiction, or authority or power on the part of this court, none of the parties so enjoined being parties to the above entitled cause.

8. The said order enjoining these respondents, and each of them, and their respective agents, attorneys, solicitors and representatives, from in any manner, whatsoever, either directly or indirectly instituting or prosecuting, or causing or inspiring to be instituted or prosecuted, in any court, forum, place or jurisdiction whatsoever, any other suit, action or proceeding making charges and seeking relief like or similar to the charges contained and the relief sought in the above entitled cause, was contrary to the evidence, contrary to the law, and without jurisdiction, or authority, or power on the part of this court, none of the parties so enjoined being parties to the above entitled cause.

9. That portion of the said order of December 13, 1907, reserving the said motion of the Corn Products Refining Company for an order compelling the dismissal of the said suit of George F. Harding, was contrary to the evidence, contrary to the law, and without jurisdiction, or authority or power on the part of this court, the said George F. Harding not being a party to this cause.

10. This court erred in directing that the said order 494 of December 13, 1907, be entered as of that date instead of being entered under date of December 26, 1907, and the entry of such order as under such prior date was without jurisdiction, or authority, or power upon the part of this court, and was unauthorized by law.

11. The Court erred in entering the said order of December 13, 1907, in said cause, after the presentation of the several motions of the plaintiff to dismiss the said suit.

12. The court erred in not sustaining the motions of the plaintiff to dismiss the said suit, respectively.

13. The court erred in enjoining the bringing on for hear-

ing of the motion to remand the said suit brought by the said George F. Harding to the State Court, said motion having been duly filed in that suit, and such injunction against such motion to remand was without authority, or jurisdiction, or power on the part of the Court. Assignment of errors. Filed Jan. 10, 1908

14. The Court erred in entering the said order of December 13, 1907, despite the motion of plaintiff in said cause filed therein on October 1, 1907, to dismiss said suit.

15. This Court otherwise erred in the entry of the said order of December 13, 1907, as appears from the record in said cause.

Wherefore, these respondents jointly and severally pray that said decretal order, and the rules, respectively, be annulled and held for nothing, and that these respondents, respectively, may be restored to all things which they have respectively lost by reason thereof.

GEORGE F. HARDING,
GEORGE F. HARDING, JR.,
A. B. JOYNER,
WM. J. AMMEN,
Respondents.
By WM. J. AMMEN,
Their Solicitors.

WM. J. AMMEN,
Solicitors for Respondents.

(Endorsed) Filed Jan. 10, 1908, H. S. Stoddard, Clerk.

495 And on to-wit: the tenth day of January, 1908, being one of the days of the regular December term of said court, 1907, in the record of proceedings thereof in said entitled cause before the Hon. K. M. Landis, District Judge, appears the following entry to-wit:

Order of Jan. 10, 1908, allowing appeal.

ORDER OF JANUARY 10, 1908, ALLOWING APPEAL.

Chicago Real Estate Loan and Trust Company,
vs.
Corn Products Company, *et al.* } 28695.

Now come the respondents, George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen by William J. Ammen, their solicitor, and present their petition for appeal and assignment of errors, praying an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the decretal order of this court entered herein on December 13, 1908.

It is ordered by the Court that said appeal to the United States Circuit Court of Appeals for the Seventh Circuit be, and the same is hereby allowed upon the respondents filing an appeal bond in the sum of two hundred and fifty ($250.00) dollars with surety to be approved by the Court.

Bond on appeal. Filed Jan. 10, 1908.

496 And on to-wit, the tenth day of January, 1908, come George F. Harding, George F. Harding, Jr., A. B. Joyner and Wm. J. Ammen, as principals and Gregory T. Van Meter, as surety and filed in the clerk's office of said Court a certain bond on appeal in the words and figures following to-wit:

497 Know all Men by these Presents, That we, George F. Harding, George F. Harding, Jr., A. B. Joyner and Wm. J. Ammen, as principals, and Gregory T. Van Meter, as surety, are held and firmly bound unto the Corn Products Refining Company, a corporation of New Jersey, in the full and just sum of two hundred and fifty to be paid to the said Corn Products Refining Company, attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 10th day of January, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of Illinois, Eastern

Bond on appeal filed Jan. 10, 1908.

Division, in a suit pending in said Court, between the Chicago Real Estate Loan & Trust Co., and said Corn Products Refining Company and others are complainant, defendants, a decretal order was rendered against the said Principal obligors above named as respondents and the said respondents having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree of the aforesaid suit, and a citation directed to the said Corn Products Refining Company, citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be holden a Chicago within thirty days from the date hereof.

Now, the condition of the above obligation is such, That if the said George F. Harding, George F. Harding, Jr., A. B. Joyner and Wm. J. Ammen, shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

GEORGE F. HARDING, (Seal)
GEORGE F. HARDING, JR., (Seal)
WILLIAM J. AMMEN, (Seal)
A. B. JOYNER, (Seal)
GREGORY T. VAN METER, (Seal)

Sealed and delivered in presence of—

.....
.....
.....

Approved by—
KENESAW M. LANDIS,
District Judge.

(Endorsed) Filed Jan., 10, 1908, H. S. Stoddard, Clerk.

Praecipe for record. filed April 30, 1908.

498 PRAECIPE FOR RECORD.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois—

Eastern Division.

Chicago Real Estate Loan and Trust Company,
vs.
Corn Products Company, *et al.* } No. 28695.

To the Clerk of the above entitled Court:—

You will please prepare and duly certify a transcript of the entire Record in the above entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Judicial Circuit, in the appeal heretofore perfected by George F. Harding, and others, as respondents in said cause, to said Court of Appeals, and include in such transcript all the files, proceedings and record entries in said cause.

Dated April 30, 1908.

WM. J. AMMEN,
GEO. F. HARDING,
Attorneys for Respondents.

(Endorsed) Filed April 30, 1908, H. S. Stoddard, Clerk.

Certificate of clerk.

499 Northern District of Illinois, } ss.
Eastern Division. }

I, H. S. Stoddard, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court made in accordance with Praecipe filed in the cause entitled Chicago Real Estate Loan and Trust Company, Complainant vs. Corn Products Company, Corn Products Refining Company, Glucose Sugar Refining Company, New York Glucose Company, C. H. Matthiessen, C. L. Glass, William W. Heaton, E. A. Matthiessen, Norman B. Ream, W. J. Calhoun, Joy Morton, W.

J. Gorman, T. B. Wagner, H. G. Herget, T. P. Kingsford, F. C. Sherwood, E. T. Bedford and J. B. Greenhut, Defendants, General Number 28,695, as the same appear from the original records and files thereof now remaining in my custody and control. Certificate of clerk.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 6th day of May, A. D. 1908.

H. S. STODDARD,
Clerk.

(Seal)

500 United States of America, } ss.

The President of the United States, to the Corn Products Refining Company, a corporation, and the firm of Moran, Mayer & Meyer, its attorneys and solicitors, greeting: Citation, filed Feb. 7, 1908.

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days form the date hereof, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, wherein George F. Harding, George F. Harding, Jr., A. B. Joyner, and William J. Ammen, are respondents, and appellants, and you are petitioner and appellee, to show cause, if any there be, why the decretal order rendered against the said responents as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Kenesaw M. Landis, Judge of the Circuit Court of the United States, Northern District of Illinois, Eastern Division thereof, this 10th day of January, in the year of our Lord one thousand nine hundred and eight.

KENESAW M. LANDIS,
Judge.

Service of the above citation and receipt of a copy thereof, admitted this day of January, A. D. 1908.

.....,
Solicitor for said Appellee.

Affidavit of Wm. J. Ammen.

United States of America. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois, Eastern Division.

William J. Ammen, being first duly sworn, on this 7th day of February, in the year of our Lord one thousand nine hundred and eight, states on his oath that he delivered a true copy of the within citation to Mr. Levy Mayer, a member of the within named firm of Moran, Mayer & Meyer, on the 10th day of January, A. D. 1908.

WM. J. AMMEN.

Sworn to an subscribed this 7th day of February, A. D. 1908, before me by said William J. Ammen.

JOHN H. R. JAMAR,
Chief Deputy Clerk.

(Endorsed) Citation. Filed Feb. 7, 1908. H. S. Stoddard, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages numbered from 1 to 424, inclusive, contain a true copy of the printed record, printed under my supervision, and filed May 25, 1908, on which this cause was argued, heard and determined, in the case of George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen, vs. Corn Products Refining Company, No. 1497, October Term, 1907, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Sixteenth day of March, A. D. 1909.

EDWARD M. HOLLOWAY,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

1 At a regular term of the United States Circuit Court of Appeals begun and held at the United States Court Rooms in the City of Chicago in said Seventh Circuit on the first day of October, A. D. nineteen hundred and seven of the October Term in the year of our Lord One Thousand nine hundred and seven, and of our Independence the one hundred and thirty-second.

And afterwards, to-wit: On the twelfth day of May, 1908, in the October Term last aforesaid, came the Appellee by its counsel, Mr. Levy Mayer, and filed in the office of the clerk of this Court, its appearance which is in the words and figures following, towit:—

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 1497. October Term, 1907.

George F. Harding *et al.*,
Appellants,

-vs-

Corn Products Refining Company,
Appellee.

The clerk will enter my appearance as Counsel for the Appellee.

LEVY MAYER.

May .11/08.

Endorsed: Filed May 12, 1908. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the eighteenth day of May, 1908, in the October Term last aforesaid, came the Appelants by their counsel, Mr. Geo. F. Harding and Mr. Wm. J. Ammen, and filed in the office of the clerk of this Court their appearances, which are in the words and figures following, to-wit:—

2 UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 1497. October Term, 1907.

George F. Harding, *et al.*,
Appellants.

-vs-

Corn Products Refining Company,
Appellee.

The clerk will enter our appearance as counsel for the Appellants.

GEO. F. HARDING
WM. J. AMMEN.

Endorsed: Filed May 18, 1908. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the eleventh day of June, 1908, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:—

Thursday, June 11, 1908.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. Christian C. Kohlsaat, Circuit Judge.
Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

Corn Products Refining Company.
1497 *vs*
George F. Harding, *et al.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

On application of Mr. William J. Ammen, counsel for appellant, it is ordered that the time for filing brief for appellants in this cause be, and is hereby extended ten days.

3 And afterwards, to-wit: On the twenty-second day of June, 1908, in the October Term last aforesaid, there was filed in the office of the clerk of this Court, a certain Motion and Agreement of counsel for extension of time for filing brief for appellants, which is in the words and figures following, to-wit:—

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, A. D. 1907.

George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen,
Appellants.
-vs-
Corn Products Refining Company,
Appellee.

Now come the appellants in the above entitled cause, by William J. Ammen, their solicitor therein, and move the Court for ten days additional extension of time within which to file Brief and Argument for Appellants in said cause.

WM. J. AMMEN
Solicitor for Appellants.

I, as solicitor for the Appellee in the above entitled cause, at the request of the said solicitor for Appellants therein, hereby consent that the above motion for extension of time for filing of Brief and Argument for Appellants in said cause, shall be allowed by the Court.

LEVY MAYER
Solicitor for Appellee.

June 20, 1908.
O. K.
KOHLSAAT, *J.*

Endorsed: Filed Jun. 22, 1908. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the twenty-third day of June, 1908, in the October Term last aforesaid, the following
4 further proceedings were had and entered of record, to-wit:—

Tuesday, June 23, 1908.

Before:

Hon. Christian C. Kohlsaat, Circuit Judge.

George F. Harding, *et al.*
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Upon the filing of an agreement of counsel, it is ordered that the time for filing brief for appellant in this cause be, and is hereby extended ten days.

And afterwards, to-wit: On the twentieth day of July, 1908, in the October Term last aforesaid, the following proceedings were had and entered of record, to-wit:

Monday, July 20, 1908.

Before:

Hon. Peter S. Grosscup, Presiding Judge.

George F. Harding, *et al.*
1497 *vs*
Corn Products Refining Company.

Upon application of Mr. Levy Mayer, counsel for appellee, it is ordered that the time for filing brief for appellee in this cause be, and is hereby extended to October 6, 1908.

And afterwards, to-wit: On the eighteenth day of August, 1908, in the October Term last aforesaid, the following proceedings were had and entered of record, to-wit:—

5 Tuesday, August 18, 1908.

Before:

Hon. Peter S. Grosscup, Presiding Judge.

1497 George F. Harding, *et al.* *vs* Corn Products Refining Co. } Appeal from the Circuit Court of the United States for the Northern District of Illinois. Eastern Division.

On motion of counsel for appellants, it is ordered that this cause be and is set down for hearing on Tuesday, October 20, 1908, and leave is hereby granted appellants to file a reply brief on or before Saturday, October 17, 1908.

And on the same day, to-wit: On the eighteenth day of August, 1908, in the October Term last aforesaid, there was filed in the office of the clerk of this Court, a certain Notice, which is in the words and figures following, to-wit:—

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, A. D. 1907.

Geo. F. Harding, *et al.* *Appellants* *vs* Corn Products Refining Co. *Appellee.* } Number 1497.

To Levy Mayer, Attorney for Appellee in the above entitled cause:

You are hereby notified that on Saturday, Aug. 15th, 1908, at the hour of one o'clock P. M., or as soon thereafter as counsel can be heard, before the Hon. Peter S. Grosscup, one of the judges of said court, at his residence, in Highland Park, Illinois, I will move the Court to set aside the order entered in said cause extending time for Appellee to file its briefs therein to October 6th, 1908, and to fix an earlier date for

the filing of the briefs for Appellee in said cause. At
6 which time and place you can be present if you see fit.
Dated this fourteenth day of August, 1908.

WM. J. AMMEN,
Attorney for Appellants.

Received copy of above notice this fourteenth day of August, 1908.

.....
Attorney for Appellee.

State of Illinois }
County of Cook. } ss.

Albert B. Joyner, being first duly sworn, deposes and says that he served the above and foregoing notice by delivering a copy thereof to Leo Weil, a clerk in charge of the office of Levy Mayer, the attorney named in said notice on the 14th day of August, 1908, before the hour of 4 o'clock P. M. of said day.

ALBERT B. JOYNER.

Subscribed and sworn to before me this 14th day of August.

ROBERT HUMPHREY,
(Seal) *Notary Public.*

Endorsed: Filed Aug. 18, 1908. Edward M. Holloway, Clerk.

Tuesday, October 6, 1908.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit on the sixth day of October, one thousand nine hundred and eight of the October Term in the year of our Lord one thousand nine hundred and eight and of our Independence the one hundred and thirty-third year.

Present:
Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.
Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

7 George F. Harding, *et al.*
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that this cause be and the same is hereby set down for hearing on October 16, 1908.

And afterwards, on the same day, to-wit: On the sixth day of October, 1908, in the October Term last aforesaid, the following proceedings were had and entered of record, to-wit:—

George F. Harding
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

On application of Mr. Levy Mayer, counsel for appellee, it is ordered that the time for filing brief for appellee in this cause be, and is hereby extended to October 13, 1908.

And afterwards, to-wit: On the seventh day of October, 1908, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wti:

Wednesday, October 7, 1908.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

8 George F. Harding, *et al.*
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

On application of Mr. Levy Mayer, counsel for appellee, it is ordered that this cause be and is set down for hearing on November 5, 1908, and that the time for filing brief for appellee be and is hereby extended to October 17, 1908.

And afterwards, to-wit: On the seventeenth day of October, 1908, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:—

Saturday, October 17, 1908.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

Before:

Hon. William H. Seaman, Circuit Judge.

George F. Harding, *et al.*
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Upon application of Mr. Levy Mayer, it is ordered that the time for filing brief for appellee in this cause be, and is hereby extended to October 20, 1908.

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9 And afterwards, to-wit: On the twenty-ninth day of October, 1908, in the October Term last aforesaid, there was filed in the office of the clerk of this Court, a Notice, Suggestion of Diminution of Record and Affidavit, which are in the words and figures following, to-wit:—

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, A. D. 1908.

George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen,
Appellants
vs
Corn Products Refining Company,
Appellee.

Appeal from the United States Circuit Court in and for the Northern District of Illinois, Eastern Division thereof.
No. 1497.

To Levy Mayer, solicitor for the appellee in the above entitled cause:

You are hereby notified that on Thursday, October 29, 1908, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, we will present to the United States Circuit Court of Appeals in and for the Seventh Circuit, the motion, a copy of which you will find attached to this notice, together with the affidavit and suggestions appended thereto, a copy of which affidavit and suggestions you will find attached to this notice, and at the same time we will present to the Court a duly certified copy of the said motion to dismiss suit filed October 1, 1907, referred to in the said motion and affidavit, and move the Court for leave to file said addi-

tional record in said cause instanter, at which time and place you can be present if you see fit.

Dated this 28th day of October, A. D. 1908.

GEORGE F. HARDING
WM. J. AMMEN
Solicitors for Appellants.

Received a copy of the foregoing notice, together with a copy of the motion and affidavit and suggestions therein referred to on this 28th day of October, A. D. 1908.

.....
Solicitor for Appellee.

State of Illinois }
County of Cook. } ss.

Albert B. Joyner, being first duly sworn, deposes and says that he served the above and foregoing notice, together with the motion, affidavit and suggestions thereto attached on Levy Mayer, solicitor therein named, by delivering a copy thereof at office of said Levy Mayer, to one T. H. Carter, a clerk in the office of said Levy Mayer on the 28th day of October, A. D. 1908.

ALBERT B. JOYNER.

Subscribed and sworn to before me this 29th day of October, A. D. 1908.

ALICE WILLNUB,
Notary Public.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, A. D. 1908.

George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen,
Appellants.
vs
Corn Products Refining Company
Appellee.

Appeal from the United States Circuit Court in and for the Northern District of Illinois, Eastern Division thereof.
No. 1497.

Now come the appellants herein and suggest to the Court that there has been a diminution of the record in said cause in that the Clerk of the Circuit Court in and for the Northern District of Illinois omitted to insert and incorporate therein the motion filed by the Chicago Real Estate Loan & Trust Company in said cause on October 1, 1907, to dismiss its said suit, a duly certified copy of which said motion to dismiss is now presented to the Court by the said appellants and the same is hereby referred to and made a part hereof, and the said appellants now move the Court for leave to file the said additional record herein instanter and in support of this motion said appellants submit herewith the affidavit of William J. Ammen, and suggestions, appended thereto.

GEORGE F. HARDING
WM. J. AMMEN
Solicitors for Appellants.

State of Illinois, }
County of Cook. } ss.

Wm. J. Ammen, being first duly sworn states on his oath that he is one of the solicitors for the appellants in the above entitled cause, and, as such solicitor, has had the active charge of the interests of said appellants in said cause ever since the filing of the record therein, the other of said solicitors, George F. Harding, having been absent from the State of Illinois, during the said entire period until on or about October 20th, 1908.

Affiant further states that he did not observe that the said motion to dismiss above referred to was not duly incorporated in the record sent up by the Clerk of the said Circuit Court in and for the Northern District of Illinois until after
11 that question was raised in the brief and argument filed herein for appellee on October 20, 1908, and upon examination of the printed transcript of the record in said cause this day made affiant finds that said motion to dismiss was in fact omitted from said record, affiant having been misled in regard thereto by the statement in the second line on page v of the index of said transcript that said motion to dismiss appears on page 243 of said transcript.

Affiant further states that said motion to dismiss was a part of the evidence before the Court on the hearing which resulted in the entry of the order appealed from and to be reviewed in the above entitled cause, and the same was treated by all the parties in interest as before the Court on such hearing, being part of the record in said cause, which was admitted in evidence by agreement as shown in the Certificate of Evidence on pages 183-184 of the transcript, and being the same motion referred to by Mr. Mayer on the hearing as shown in the Certificate of Evidence on pages 173 and 204-5 of the transcript, and the same motion was referred to in the opinion of Judge Landis as shown on page 214 of the transcript and again referred to by counsel as shown on page 218, and the written motion No. 1 to dismiss bill filed and presented on December 26, 1907, recited the filing of the said former motion on October 1, 1907, and moved that that motion then filed be granted, as shown on page 115 of the transcript.

Further affiant saith not.

Dated this 28th day of October, A. D. 1908.

WM. J. AMMEN.

Subscribed and sworn to before me this 28th day of October, A. D. 1908.

ALICE WILLNUR,

(Seal) *Notary Public in and for Cook County, Illinois.*

SUGGESTIONS IN SUPPORT OF THE FOREGOING MOTION.

The brief and argument filed herein on October 20, 1908, on behalf of the appellee, on pages 33-41, sets up the contentions that said motion of October 1, 1907, to dismiss the suit, was never filed or presented to the Court. This is a material matter on this appeal, as will be seen from both the briefs already filed. The fact that it is a part of the record which should have been sent up by the Clerk is clearly shown above. It would seem in view of such showing, that there ought not be any doubt as to the right of appellants to now file a copy of the same herein duly certified by the Clerk. The appellants therefore, ask that the above motion be granted with such terms and directions as the Court may impose as to the printing of the same.

Respectfully submitted,

GEORGE F. HARDING
WM. J. AMMEN
Solicitors for Appellants.

Endorsed: Filed Oct. 29, 1908. Edward M. Holloway, Clerk.

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12 And afterwards, to-wit: On the twenty-ninth day of October, 1908, in the October Term last aforesaid, there was filed in the office of the clerk of this Court, a certified copy of Motion to dismiss Bill of Complaint, which is in the words and figures following, to-wit:—

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

Chicago Real Estate Loan and Trust Company *vs* Corn Products Company, *et al.*	28695.

Be it Remembered, That on this day to-wit: the first day of October, 1907, there was filed in the clerk's office of said Court in the above entitled cause a certain Motion in words and figures following, to-wit:

MOTION TO DISMISS.

CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois

Eastern Division.

Chicago, Oct. 1, 1907.

Chicago Real Estate Loan & Trust Co.
vs.
Corn Products Co., *et al.* } Gen. No. 28695. Bill & Cross-Bill.

Motion of said Complainant to dismiss bill of complaint without prejudice & without prejudice to right of cross-complainant to prosecute his cross-bill in said cause.

Order: No Order.

WM. J. AMMEN,
Plaintiff's Attorney.

MORAN, MAYER & MEYER & JAMES M. SHEEAN,
Defendants' Attorneys.

Motions must be endorsed with number and title of cause.

(Endorsed) Filed Oct. 1, 1907. H. S. Stoddard, Clerk.

13 Northern District of Illinois, }
Eastern Division. } ss.

I, H. S. Stoddard, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the certain Motion filed in said Court on the first day of October A. D. 1907, in the cause wherein Chicago Real Estate Loan & Trust Company is the Complainant and Corn Products Company, et al, are the Defendants, as the same appears from the original thereof now remaining in my custody and control.

In Testimony whereof, I have hereunto set my hand and

affixed the seal of said Court at my office in Chicago, in said District, this 28th day of October, A. D. 1908.

H. S. STODDARD,
Clerk.

(Seal)

Endorsed: Filed Oct. 29, 1908. Edward M. Holloway, Clerk.

And afterwards on the same day, to-wit: On the twenty-ninth day of October, 1908, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Thursday, October 29, 1908.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

14 George F. Harding, *et al.*
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day comes the appellants by their counsel and suggests a diminution of the record in this cause and presents a motion for a writ of certiorari and the Court having heard the same and counsel for appellee being present and consenting thereto, it is ordered that the said motion be, and is hereby granted and that the certified copy of the motion of October 1, 1907, to dismiss the bill of complaint, filed this day in this Court, be taken and considered as the return to the writ of certiorari.

And afterwards, to-wit: On the fifth day of November, 1908, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:—

Thursday, November 5, 1908.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

1497 George F. Harding, *et al.* *vs* Corn Products Refining Company. } Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause having been partly heard on the printed record and briefs of counsel and on oral argument by Mr. William J. Ammen, counsel for appellants, and by Mr. Levy Mayer, counsel for appellee, the further hearing is continued until ten o'clock tomorrow morning.

And afterwards, to-wit: On the sixth day of November, 1908, in the October Term last aforesaid, there was filed in the office of the clerk of this Court, a certified copy of the Answer of W. J. Ammen, which is in the words and figures following, to-wit:

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES CIRCUIT COURT,

In and for the Northern District of Illinois,

Eastern Division Thereof.

Chicago Real Estate Loan & Trust Company,
vs.
Corn Products Company, *et al.* } No. 28,695.

In the matter of the rule entered on November 12, 1907, in the above entitled cause, that George F. Harding, George F. Harding, Jr., William J. Ammen, and A. B. Joyner, show cause why they should not be attached for contempt of said court for violating the temporary stay and restraining order entered in said cause on June 8, 1907.

To the Honorable, the Judges of said Court, in Chancery sitting:

This respondent, William J. Ammen, one of the persons named in the said rule above referred to, for answer thereto, respectfully submits and states to the Court the following, namely:

1. This respondent is and has been for nearly twenty
16 years last past an attorney at law of this Court, as well as of the State Courts of Illinois, and still is such attorney and solicitor.

2. Before the filing of the Bill of Complaint in the above entitled cause, in the State Court, this respondent, at the request of George F. Harding, Jr., as president and manager of the said complainant corporation, assisted by Mr. A. B. Joyner, then and still an attorney at law in the said State Courts, in preparing the Bill of Complaint subsequently filed by the said A. B. Joyner, in said cause, in said State Court, as appears from the said Bill of Complaint now of record in said cause, reference thereto being hereby made by this respondent.

3. After the filing of the said Bill in the said State Court, this respondent had nothing further to do with the said cause until a motion was made in said State Court to remove

said cause to this Court, whereupon this affiant, at the request of the said president and manager of the said corporation, appeared in said cause before said State Court, and there and there assisted the said Joyner in opposing the said motion for removal of said cause, on or about the 8th day of June, A. D. 1907.

4. After the removal of the said cause to this Honorable Court, this respondent, by request of the said president and manager of said corporation, assumed entire charge and management of the said cause, as the sole solicitor and attorney of the said complainant corporation therein, and from that time to the present this respondent has had and still has the entire control and management of said cause, as the attorney and solicitor of said complainant, the said A. B. Joyner not being an attorney at law authorized to practice before this Honorable Court, and the assent and concurrence of the said A. B. Joyner to this respondent's exclusive control of the
17 said cause, as above set forth, was duly given by the said Joyner, and at no time since said removal of said cause to this Court has the said Joyner had any connection therewith, or any control thereof, as an attorney or solicitor of said complainant.

5. Soon after the said removal of said cause to this Court, this respondent advised the said president and manager of said corporation, that, in the opinion of this respondent, an amended and supplemental bill should be prepared and leave asked of this Court to file the same in said cause, in this Court; and, thereupon, said George F. Harding, Jr., informed this respondent that his father, George F. Harding, Sr., then, and still, and for many years last past, an attorney at law, of this Court, and of said State Courts, was then engaged in the preparation of a Bill of Complaint to be filed by some stockholder of the said Corn Products Company, other than the said complainant in this cause, and that his said father had been diligently investigating the facts in relation to the matters involved, and had discovered many facts not known to the said complainant at the time its said bill was filed in said State Court, and, thereupon, this respondent stated to the said George F. Harding, Jr., that this respondent would wait until the said George F. Harding, Sr., should have completed the preparation of the said Bill of Complaint then in course of preparation by him, as above set forth, and, that, after seeing the same, this respondent would be better able to pre-

are an amended and supplemental bill to be filed, by leave of Court in the above entitled cause.

6. Accordingly, this respondent waited for some weeks for the completion of the said Bill of Complaint by the said George F. Harding, Sr., this respondent having had no information or knowledge, or notice, in the meantime, as to who was to be the complainant in the said bill so prepared by the said George F. Harding, Sr.; and, on or about October 18 1st, 1907, or shortly prior thereto, said George F. Harding, at the request of this respondent, furnished to this respondent, a voluminous document purporting to be a draft of a Bill of Complaint to be filed against said Corn Products Company, and others, as defendants, and informed this respondent that the same was the Bill of Complaint prepared by him, and this respondent upon examination thereof, found that it did not appear therefrom in what Court the same was to be filed, and this respondent has no recollection now as to who was the complainant mentioned in said bill, except that respondent does recollect, distinctly, and so states the fact to be, that said complainant in the above entitled cause was not mentioned as the complainant in the said bill so furnished to this respondent, and, at the same time, or about the same time, namely, on or about October 1st, 1907, or shortly prior thereto, this respondent was informed by said George F. Harding, Sr., that the said bill so prepared by him, the said George F. Harding, Sr., would be printed, or was then being printed, and thereupon this respondent further examined the said bill so furnished to this respondent, immediately, and thereupon suggested to the said George F. Harding, Jr., as the attorney and solicitor for said complainant, corporation, that the said bill so prepared by the said Harding, Sr., might, with some changes, be used as an amended and supplemental bill in the above entitled cause, or, that the above entitled cause might be dismissed, by leave of this Court, and the said bill so prepared by the said Harding, Sr., with proper changes therein, might be filed in the State Court, by the said Chicago Real Estate Loan & Trust Company, complainant, after a proper dismissal of the said above entitled cause, and thereupon the said George F. Harding, Jr., as the president and manager of said complainant corporation, requested this respondent, as the attorney and solicitor of said corporation to confer with said George F.

Harding, Sr., as to cooperation, so far as practicable,
19 and proper, between the said corporation and said
George F. Harding, Sr., and, after such conferences, this respondent, as the attorney for said corporation, decided to take proper steps for the dismissal of the bill in the above entitled cause, and, thereupon, file in the State Court another bill for said corporation, substantially like the bill so prepared by said Harding, Sr., with such changes therein, however, as this respondent might deem advisable, as the attorney for such corporation, all of which was well known to said George F. Harding, Sr., as he, and this respondent, freely conferred together with a view of such cooperation between said Harding and said corporation as separate and distinct holders and owners of the stock of said Corn Products Company, as alleged in their said respective bills of complaint.

7. Pursuant to the said request of the said George F. Harding, Jr., and the said plan of this respondent, as above set forth, this respondent served notices in the above entitled cause to dismiss the same, but, on account of the absence of the Judges of this Court, this respondent was not able to present such motion, for a considerable period, and later, the same was abandoned for the reasons hereinafter shown.

8. While this respondent was waiting for an opportunity to present said motion to dismiss said suit, as above set forth, the said copy of bill so prepared by said Harding, Sr., and so furnished to this respondent, was taken out of the hands of this respondent by said George F. Harding, Sr., for the purpose, as this respondent was then informed, of being printed, and this respondent is informed and believes, and so states the fact to be, that Abner C. Harding, a brother of said George F. Harding, Jr., and a director and stockholder of said Chicago Real Estate Loan & Trust Company, and acting for such company, caused the same to be printed, or at
least some copies thereof to be printed, as a bill to be
20 filed in the State Court, namely, the Circuit Court of
Cook County, Illinois, by such corporation, after the dismissal of the above entitled cause, this respondent having theretofore advised said George F. Harding, Jr., and said Abner C. Harding, that, in the opinion of this respondent, such dismissal would be allowed by this Honorable Court, and, thus it happened, as this respondent is informed and believes, that said Bill was printed with a view of filing the same in

the Circuit Court of Cook County, Illinois, by said corporation as complainant therein.

9. On or about October 16, 1907, a printed copy of the said bill of the said Chicago Real Estate Loan and Trust Company was furnished to this respondent by the said Abner C. Harding, and thereupon, this respondent advised the said Abner C. Harding, that said George F. Harding, Jr., as the president and manager of the said complainant corporation, had informed this respondent, that upon further investigation, and consideration, he had decided that it would be better to apply to this Honorable Court for leave to file such printed bill, with proper changes therein, as an amended and supplemental bill, in the above entitled cause, instead of proceeding, as had been contemplated, to secure a dismissal of the above entitled cause, and thereafter to file another bill in the State Court for said Chicago Real Estate Loan & Trust Company, as complainant therein, and, thereupon, the said George F. Harding, Jr., pursuant to said decision last above named stated to this respondent, requested this respondent that the copy so delivered to this respondent, of the printed copies of the said bill of complaint, printed as above set forth, be revised and changed by this respondent, as this respondent, as the attorney and solicitor for said Chicago Real Estate Loan & Trust Company, might deem proper, with a view
21 of then presenting the same to this Honorable Court with a motion for leave to file the same as an amended and supplemental bill, in the above entitled cause. And for this very purpose, this respondent has since that time had and still has in his possession the said printed copy of said bill, and this respondent is now engaged, from day to day, in the revision thereof, and in making proper changes therein, for the purpose of asking leave of this Court to file the same in the above entitled cause, as an amended and supplemental bill therein, at an early date.

10. This respondent further answering states that this respondent is informed and believes and so states the fact to be, on such information and belief, that said George F. Harding, Sr., and his attorney and solicitor, A. B. Joyner, secured from the said Abner C. Harding some of the printed copies of the said bill prepared as aforesaid by the said George F. Harding, Sr., and caused to be printed, as aforesaid, by the said Abner C. Harding, and, thereupon the said George F. Harding, Sr., and the said A. B. Joyner, as his attorney and solicitor, having first changed the said printed copies by mak-

ing the said George F. Harding, Sr., complainant, and otherwise changing the same as they deemed advisable, proceeded to file the same, and did file the same in the Superior Court of Cook County, Illinois, the said last named suit being General Number 263565, in said Superior Court, being the same suit subsequently removed to this Honorable Court, and to the Bill of Complaint therein, and to the Amended Bill of Complaint therein, now on file in the office of the clerk of this Honorable Court, reference is hereby made by this respondent.

11. This respondent further answering says that said suit Number 263565 was not begun by this respondent, or by the advise or suggestion of this respondent, and this respond-
22 ent is not and has never been the attorney or solicitor of or for George F. Harding, Sr., as complainant therein; but, this respondent did, as the attorney and solicitor of the said Chicago Real Estate Loan and Trust Company, meet the said George F. Harding, Sr., (pursuant to the said request of the said George F. Harding, Jr.,) and the said A. B. Joyner, in conferences in relation to the common interests of the said Chicago Real Estate Loan & Trust Company, and the said George F. Harding, Sr., as separate and independant holders of stock in the said Corn Products Company, as set forth in the said two bills of complaint now before this Honorable Court, respectively, the date of one of such conferences being on or about October 16, 1907, and the object thereof being to determine, among other things, to what extent, if any, the said Chicago Real Estate Loan & Trust Company, and the said George F. Harding, Sr., might cooperate in securing and producing proof of their respective bills of complaint, above mentioned, or in support of the allegations thereof, and after the filing of the said bill, in the said Superior Court, another conference was had between this respondent and the same parties with the same object in view, namely, the making of the proof of the allegations in the said respective bills of complaint, and at or before each and every of such conferences, and at all other times, this respondent was informed by the said George F. Harding, Sr., and the said George F. Harding, Jr., that both the said Chicago Real Estate Loan & Trust Company, and the said George F. Harding, Sr., were separate and distinct and independent holders of stock of and in the said Corn Products Company, as alleged in the said respective bills of complaint, and had been such holders thereof as alleged in the said bills

respectively, and this respondent fully believed and still believes such information to be true, and it never occurred to the mind of this respondent, for a moment, nor was it
23 ever suggested to this respondent, that the filing of the said bill in the said Superior Court by the said George F. Harding, Sr., as complainant therein, or by the said Joyner, as his attorney therein, would, or could, by any possibility, be a violation of the letter or spirit of the said order of June 8, 1907, in the above entitled cause, or any part thereof, and, although this respondent had nothing to do with the institution of said suit in the said Superior Court, and was not the attorney or solicitor of the said complainant therein, this respondent, further answering, respectfully represents to this Honorable Court that this respondent, if it had occurred or been suggested to this respondent that the bringing of said suit in said Superior Court would or could have been, by any possibility a violation of the said order of June 8, 1907, or a contempt of this Honorable Court, this respondent would have instantly and persistently advised against and protested against the bringing of the same. And this respondent respectfully represents and states to this Honorable Court that this respondent never, knowingly or intentionally, violated the said order of June 8, 1907, or any part thereof, either in its letter or spirit, or advised or aided or abetted in any violation thereof and this respondent has always entertained and still entertains the profoundest respect for this Honorable Court, and particularly, for the Judge who entered the said order of June 8, 1907, and this respondent has never by act or speech, or otherwise, directly or indirectly, intentionally or voluntarily, or knowingly, been guilty of any contempt of or toward this Honorable Court, or even of any disrespect of or toward this Honorable Court; and this respondent further answering the said rule represents and states that this respondent is informed and believes, and so states the fact to be, on such information and belief, that the said George F. Harding, Sr., and the said George F. Harding, Jr., and
24 the said A. B. Joyner respectively, during the entire period embraced within this answer, have entertained and still entertain the same feelings as those above set forth on the part of this respondent, and never, intentionally or knowingly, violated the said order of June 8, 1907, or any part thereof, either in its letter or spirit, directly or indirectly, by word or act, or knownigly or intentionally, were guilty of any contempt of or disrespect toward this Honorable

Court, and this respondent never heard any suggestions or intimation from any of them of any intent or purpose to avoid or violate or evade in any way, any order of this Court whatsoever.

WM. J. AMMEN,
Respondent.

State of Illinois, }
County of Cook. } ss.

William J. Ammen, being first duly sworn, states on his oath that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

Dated this November 13, 1907.

WM. J. AMMEN.

Subscribed and sworn to before me this 13th day of November, A. D. 1907.

ALICE WILLNER,
(Seal) *Notary Public.*

(Endorsed) Filed Nov. 13, 1907, H. S. Stoddard, Clerk.

Northern District of Illinois }
Eastern Division. } ss.

I, H. S. Stoddard, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby
25 certify the above and foregoing to be a true and complete copy of the certain Answer of Wm. J. Ammen to rule of November 12, 1907, filed in said Court on the thirteenth day of November, A. D. 1908, in the cause wherein Chicago Real Estate Loan & Trust Company is the Complainant and Corn Products Company, et al., are the Defendants, as the same appears from the original thereof now remaining in my custody and control.

In Testimony whereof, I have hereunto set my hand and

affixed the seal of said Court at my office in Chicago, in said District, this fifth day of November, A. D. 1908.

H. S. STODDARD,
Clerk.

(Seal)

(Endorsed: Filed Nov. 6, 1908. Edward M. Holloway, Clerk.

And afterwards, to-wit: on the sixth day of November, 1908, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:—

Friday, November 6, 1908.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge, Presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

George F. Harding, *et al.*
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Now again come the parties by their counsel and this
26 cause now comes on to be heard to conclusion on the printed record and briefs of counsel and on oral argument by Mr. Levy Mayer, counsel for appellee, and by Mr. George F. Harding, counsel for appellant, and the Court having heard the same, takes this matter under advisement.

And afterwards, to-wit: On the nineteenth day of January, 1909, in the October Term last aforesaid, there was filed in the office of the clerk of this Court, the Opinion of the Court in this cause, which Opinion is in the words and figures following, to-wit:

27 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 1497. October Term and Session, A. D. 1908.

George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen,

Appellant,

v.

Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Before Grosscup, Baker and Seaman, Circuit Judges:

In a suit brought by Chicago Real Estate Loan & Trust Company against Corn Products Refining Company and other defendants, originally in a state court, but pending in the Circuit Court of the United States on removal proceedings, the several appellants were enjoined from prosecution of a subsequent suit in the Superior Court of Cook County, commenced by the appellant, George F. Harding, against certain of the defendants in such pending suit, impleaded with others, and from other proceedings mentioned in the order. This appeal is from the injunctional order so granted by the trial court, entered December 26, 1907, but bearing date December 13, 1907, which reads as follows:

(Title of Cause.)

"This day comes on to be heard the motion of the defendant, Corn Products Refining Company, entered of record herein, November 4, 1907, for an injunction restraining the prosecution of the suit of George F. Harding vs. Standard Oil Company, of New Jersey, Corn Products Refining Company, et al., filed in the Superior Court of Cook County, Illinois, on or about October 19th, 1907, and bearing General Number
28 therein, 263,565, and for an order to compel the dismissal of said last described suit; and there also now coming on to be heard the rule entered herein on November 12th, 1907, against George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, to show cause why they and each of them should not be attached for contempt of this

court for violating the restraining order entered herein on June 8, 1907; and the court having heard and considered the answers to said rule, filed herein on November 13th, 1907, by said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and having considered the petition of said Corn Products Refining Company, filed herein on November 4th, 1907, and the exhibits thereto, and all the records and files herein, and all the oral evidence given by and statements of said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner in open court; and the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner being now present in open court, in person, and being also represented by said George F. Harding and William J. Ammen, as their solicitors; and the court having heard the arguments of Levy Mayer, Esq., solicitor for said petitioner, and of said solicitors for said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and being now fully advised in the premises:

"The Court finds that by the institution of said suit of George F. Harding vs. Standard Oil Company, of New Jersey, et al., the said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner have, and each of them has knowingly and wilfully violated the order of this court, entered herein on June 8th, 1907, but the court of its own motion hereby discharges the said rule of November 12th, 1907, for contempt, without the infliction of any punishment on any of the said respondents to said rule; and

"The Court further finds that the further prosecution of said suit of George F. Harding vs. Standard Oil Company, of New Jersey, et al., and the institution by said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, of any action like or similar to the present cause should be enjoined.

"Wherefore, the premises considered, it is hereby ordered, adjudged and decreed that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attor-
29 neys, solicitors and representatives be, and they hereby are, jointly and severally, restrained and enjoined until the further order of this court, from further prosecuting or taking any steps or proceedings of any kind in said case of George F. Harding vs. Standard Oil Company, of New Jersey, Corn Products Refining Company, et al., which was in-

stituted in the Superior Court of Cook County, Illinois, on October 19th, 1907, and was numbered therein 263,565, and which case was subsequently docketed in and is now pending in this court as case numbered 28,865.

"It is hereby further ordered, adjudged and decreed that said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, and each of them, and their and each of their agents, attorneys, solicitors and representatives be, and they hereby are, jointly and severally, restrained and enjoined, until the further order of this court, from in any manner whatsoever, either directly or indirectly, instituting or prosecuting, or causing or inspiring to be instituted or prosecuted, in any court, forum, place or jurisdiction whatsoever, any other suit, action or proceeding making charges and seeking relief like or similar to the charges contained and the relief sought in the case herein of Chicago Real Estate Loan & Trust Company against said Corn Products Company, et al.; but said George F. Harding, George F. Harding, Jr., William J. Ammen and A. B. Joyner, jointly or severally, by an appropriate proceeding or petition, and upon a proper showing, may apply to this court for leave to intervene herein or become parties hereto; and

"It is further hereby ordered that that part of said motion of said defendant, Corn Products Refining Company, seeking an order compelling the dismissal of said suit of George F. Harding vs. Standard Oil Company, of New Jersey, et al., be, and the same hereby is continued and reserved for the future consideration of this court."

The transcript of record is voluminous, containing about 250 printed pages of "Certificate of Evidence," and many more pages of pleadings and proceedings in the primary suit, including the petition for the injunctional order. In so far as these matters are deemed material for the purposes of review they are mentioned in the opinion.

30 Seaman, Circuit Judge, delivered the opinion of the court:

The injunctional order (pendente lite) from which this appeal is prosecuted arose in a suit in equity, pending in the trial court, brought by Chicago Real Estate Loan & Trust Company as complainant, against the appellee and various other corporations and persons named as defendant. Under the well settled doctrine, therefore, (for which citations of authority are needless) review of such order does not involve the utimate merits of the controversy presented by either of

the bills in question, nor the major part of the great array of proceedings and evidence contained in the transcript of record and discussed in the briefs and argument submitted by counsel. The only questions for determination are: (1) Had the trial court jurisdiction to entertain the application for an injunction? And jurisdiction appearing, (2) Was the injunctional relief improvidently granted?

1. The bill was originally filed in the Circuit Court of Cook County, and removed to the Circuit Court of the United States, on petition filed by one of the corporation-defendants, averring with other matters that the petitioner (Corn Products Refining Company) and all of the other corporations named as defendants were incorporated in and citizens of New Jersey, and not citizens elsewhere, while several of the individual defendants are mentioned as citizens of Illinois, and the complainant, Chicago Real Estate Loan & Trust Company, is an Illinois corporation and citizen. This petition purports to show two causes for removal—one that the controversy in suit is wholly between the petitioner and the complainant and thus between citizens of different states, and the other that the bill tenders a federal question in such controversy. The contentions that the trial court acquired no jurisdiction under the removal, are not clearly defined by counsel for appellants, either in printed brief or oral argument; but the bill distinctly avers for the alleged cause of action, conduct and proceedings on the part of the defendants "in violation of the laws of the United States." So removal was authorized for that cause, although no ground may have appeared therefor under the other cause alleged in the petition, and jurisdiction of subject matter and parties to the bill was vested in the trial court.

The appellants George F. Harding and A. B. Joyner
31 were cited to appear and show cause why an injunction should not issue, under a petition filed for that purpose in such pending suit, and both appeared and answered the petition. Personal jurisdiction thereupon is unquestionable, although Harding was not one of the parties to such prior suit, and Joyner had appeared therein only as solicitor of record for the complainant. Whether jurisdiction for the purposes of the order extends as well over the other appellants—George F. Harding, Jr., who was president of the Chicago Real Estate Loan & Trust Company and not otherwise a party to the proceeding, and William J. Ammen, as attorney representing both that corporation and the first mentioned

appellants in the litigation—neither made parties to the petition, nor ruled to show cause thereunder, is a question which may be passed, for the present at least, as secondary to the inquiry upon the rightfulness of the injunction against the alleged principals of record.

With jurisdiction thus vested in the trial court under the bill of the Chicago Real Estate Loan & Trust Company, the authority to entertain the application for injunctional relief against the subsequent suit of the appellant, George F. Harding, clearly appears, as we believe, from mere inspection of the bills respectively in each. The primary suit purports to be a stockholders' bill, filed by the complainant, as owner of shares of stock in the defendant Corn Products Company for the benefit, as well, of all other holders of stock having like interest, charging conspiracy and illegal combinations on the part of the several constituent corporations and individuals, named as defendants, to merge the corporations, create the Corn Products Refining Company (appellee) as an unlawful trust, and transfer all the corporate properties to such new corporation, thereby depriving the complainant and other stockholders, "not parties to said conspiracy," of their rights and interests. Relief is sought in seizure of all the corporate properties described in the bill, appointment of a receiver, injunction against transfers and other acts, together with general equitable relief, so that exercise of jurisdiction under this bill necessarily extends over all the property and controversies referred to. This doctrine thereupon, we believe to be well settled: That the court of equity first acquiring jurisdiction of such cause, with or without actual seizure of the res, obtains the power to hear and determine all such controversies; that its jurisdiction becomes exclusive for de-
32 termination of the issues and administration of equitable relief; and that pending complete administration, such jurisdiction may be protected by injunction against litigation of the same controversies by parties or privies in other courts.

The subsequent suit, commenced by the appellant, George F. Harding, in the Superior Court, as exhibited by the bill filed therein, is alike in subject matter and relief sought, with the main averments of conspiracy and injury mere duplications of the prior bill, differing only in these particulars: That Harding is substituted as complainant (described as a resident of California), with alleged individual ownership of shares in the same defendant-corporation (Corn Products

Company); that averments are inserted charging "Standard Oil Company of New Jersey" as another party to the conspiracy, together with three other individuals, each named as additional parties to the bill; and the averment of violations of the federal statute, contained in the former bill, do not appear in the Harding bill.

2. Were no facts involved, therefore, in the present inquiry beyond those above recited, the priority of the bill pending in the trial court and unmistakeable attempt, in the Harding bill, to litigate the same questions for like relief in another forum, would plainly appear to justify a restraining order against prosecution of the second bill, as fairly within the judicial discretion of the court.

The record, however, establishes another state of facts in reference to the suit and proceedings in the trial court, which we believe to be material for testing the discretionary powers of the court to that end. While a large portion of the matters certified in the transcript is deemed irrelevant for any purposes of this appeal, the evidence referred to tends to establish, not only repeated motions and efforts on the part of the complainant in the prior suit to dismiss its bill, but that well founded objections were there raised to the right of such complainant to sue for any form of relief in the premises, for want of interest cognizable in equity; and we are impressed with the force of this evidence, as bearing upon the issue of judicial discretion, raised by the several motions submitted for dismissal prior to the entry of the injunctional order. The contentions on behalf of the appellee, that these facts must be disregarded, and that the ultimate motions to dismiss were made too late to entitle them to consideration, we believe to be untenable.

33 For the present inquiry, the various complications which appear in proceedings and pleadings, in the suit of Chicago Real Estate Loan & Trust Company—referred to as the Real Estate Company—after removal to the trial court, do not require mention. It is sufficient to state: first, that issues were distinctly raised by answer, among other defenses, upon the complainant's right to maintain the bill, (1) that its alleged ownership of stock in the Corn Products Company (defendant) was ultra vires its charter as an Illinois corporation, and (2) that it became a party to, was engaged in and accepted benefits under the transactions complained of, pleading such facts by way of estoppel; and second, that a cross bill was filed by one of the defendants, averring that the

complainant was not entitled to the shares of stock mentioned in the bill ,and praying for cancellation of the stock, stay of "prosecution of the bill" and other relief. On the part of the appellants, the objection of ultra vires so raised is conceded to be well founded, under the incorporation of the Real Estate Company and authorities cited; and the certificate of evidence shows an affidavit, purporting to be made by the President of the Real Estate Company—offered on behalf of the appellants in the trial court, in support of motions then made (as hereinafter mentioned) for dismissal of the bill filed by that corporation—which states that its attorneys were instructed accordingly, in September, 1907, to dismiss such bill. It further states that a motion for that purpose was filed in the trial court, October 1, 1907—of which a copy appears—and notice served on counsel for the defendants; describes two appearances thereupon without obtaining a hearing; and then states, that counsel for the defendants agreed to waive further written notice and attend on oral notice, whenever such motion could be heard. No effort was made, however, to press this motion, nor does further mention of it appear, except as hereinafter stated. As filed, it reads, for dismissal "without prejudice to right of cross-complainant to prosecute his cross bill in said cause."

The Harding suit, enjoined under the order appealed from, was commenced in the Superior Court, October 19, 1907, and the rule under which this injunction issued was entered November 4 and came on for hearing November 12, 1907. Such hearing, however, was interrupted by the entry of a rule against all of the appellants to "show cause why they should not be attached for contempt" for violation of a pre-
34 existing stay order. Examination of the parties proceeded immediately under the last mentioned rule, and all of the testimony preserved in the "certificate of evidence" in the present record, appears to be directed thereunder, but (as certified) was applied as well for the hearing upon the petition for an injunction. These examinations closed (after several postponements) on December 13, and the oral opinion then announced by the court, as we understand the record, related alone to the contempt rule, which was then disposed of; but it was followed by remarks in reference to an injunction under the other rule and an adjournment was directed for its consideration. While the contempt proceedings are otherwise independent of the injunction, and not reviewable under this appeal, the method of hearing referred

to, together with the colloquies reported between court and counsel thereafter, tend to confuse the import of such adjournment; but the object of adjournment was thus stated by the court: "I want to consider the question further before I enter the order" for an injunction. So, we are impressed with no doubt that final decision remained open for the adjourned day, and the contention otherwise on the part of counsel for the appellee, we believe to be untenable in fact, if not without force in any view of the record.

The established facts are: That the hearing was adjourned; that all parties appeared on December 26, as the (ultimate) adjourned day; that he appellants forthwith tendered motions (in several forms), made on behalf of the Real Estate Company to dismiss its bill of complaint in the pending cause —each without prejudice to the rights of the cross complainant to prosecute his cross bill—together with the affidavit of its president, referring to the previous motion of October 1 and stating the grounds of dismissal, as before mentioned; and that such motions were opposed by counsel for the appellee and denied by the court, prior to the consideration or entry of the injunctional order appealed from. Each of the motions referred to was made by the proper party to accomplish dismissal of the bill then pending in the trial court; was neither objectionable in form and substance, nor was objection raised for insufficiency of one or the other to preserve any rights set up in the cross bill; and the purpose of the appellants in their introduction, to remove the only tenable ground for enjoining prosecution of the Harding bill, was distinctly stated and obvious. That such motions were in
35 apt time, on the adjourned day of the hearing, appears from the foregoing recitals. We are of opinion, therefore, that the subsequent injunctional order was unauthorized in the face of those tenders, unless the evidence establishes just cause for denial of the motions to dismiss the prior suit of the Real Estate Company, without prejudice to relief under the cross bill filed therein.

The jurisdiction of the trial court over the parties, subject-matter and controversies involved in that suit, inclusive of the well recognized authority vested in courts of equity to protect such jurisdiction throughout its course against interference, is (as before mentioned) undoubted. But the fact that such jurisdiction is established in the federal court, either primarily or through removal, affords no ground for con-

tention that the complainant in such suit may not dismiss his bill, within the rules applicable to all courts in reference to voluntary dismissals. The general rule, that a complainant retains entire dominion over his suit up to a decree, so that he may dismiss it as of course, with the well settled qualification of such right, in favor of the defendants or parties who have joined as complainants, to save rights which may have been acquired under the suit (Pullman's Car Co. v. Transportation Co., 171 U. S. 138, 145; 2 Bates on Fed. Eq. Prac. §§ 658, 659), is upheld alike in all courts of equity, federal and state. To authorize denial of such right to discontinue "there must be some plain, legal prejudice" to the other parties, which "must be other than the mere prospect of future litigation" as its result (Ibid); and it is equally free from doubt under the federal system and authorities, that no departure from this rule is authorized for persistent efforts on the part of the suitor, either before or after removal to the federal court, to obtain standing for litigation of his controversy in a state court. The complainant is not only entitled to his choice of forums, in bringing his suit within coordinate jurisdictions—subject only to the contingency of removal to the federal court for statutory cause—but he is equally free to dismiss the suit on removal, irrespective of any purpose to have another one brought in the state court, which may be so framed as to avoid removal. Under the foregoing propositions, which we believe to be well settled and elementary, the contentions in the argument in reference to the conduct and purposes of the appellants in their various proceedings in evidence, are neither within the reviewable
36 issue, nor applicable in any sense for its solution. Laying such contentions out of view, therefore,—with their acrimonious discussion in the briefs submitted by counsel respectively—we proceed to the inquiry under which we believe the discretion vested in the trial court must be tested; namely, whether the status of the suit pending in such court justified denial of the motions there made on behalf of the complainant to dismiss its bill.

The pleadings in that case are set out in the record. No testimony appears to have been taken under the issues, nor proceedings had beyond such framing of the issues, and the Real Estate Company remained sole complainant in the suit, with no other stockholder intervening for the relief sought. Thus the solution is free from the complication which arises

when a suit has progressed beyond such preliminary stage, so that legal prejudice may result from dismissal without decree upon the merits—as exemplified and discussed in the various authorities cited in the appellee's brief—and rests alone on the effect which may be presumed from the pleadings. Under the saving clause expressly stated in each motion in favor of the cross complainant, it is unquestionable, that allowance of the motion for dismissal would leave undisturbed jurisdiction and rights acquired through the cross bill, for affirmative relief. The inquiry of prejudice, therefore, is narrowed to the above stated issues raised by the several answers of the defendants, and we are of opinion that the authorities are harmonious in upholding the general rule in such case; that no sanction appears, under either line of cases cited in the argument, for denying leave to dismiss the suit because of defensive issues so raised by the pleadings alone. The utmost effect of discontinuance in reference to either issue is to leave such controversy open for future litigation, between the same or other parties, which is not legal prejudice; and it may well be noted that both answers challenging the complainant's right to maintain its bill furnish strong ground in favor of discontinuance. For the doctrine which thus becomes applicable and controlling, we deem it sufficient to cite the exhaustive opinion in three of the cases referred to in the appellee's brief: C. & A. R. R. Co. v. Union Rolling Mill Co., 109 U. S. 702, 713; Pullman's Car Co. v. Transportation Co., 171 U. S. 138, 146; Detroit v. Detroit City Ry. Co., 55 Fed. 569, 572. The motion was rightly made for dismissal "without prejudice," as that is the settled prac-
37 tice in equity whenever a bill "is dismissed without a consideration of the merits." Swan Land & Cattle Co. v. Frank, 148 U. S. 603, 612.

We are of opinion, that the motion for dismissal of the Real Estate Company's bill was not only seasonably made, but that it was entitled as well to leave of court to dismiss so as to remove cause for enjoining the prosecution of the new bill, filed by a stockholder setting up ownership free from the challenge of title to maintain the original bill, and that the order appealed from was, therefore, unauthorized and must be reversed.

The proceedings discussed in the argument in reference to an attempted removal of the Harding suit to the trial court are not involved in this appeal, nor properly included in the

transcript of record, and we are without authority for their consideration.

The order of the Circuit Court from which this appeal is brought is reversed, accordingly, with direction to that court to dismiss the bill of the Real Estate Company, in conformity with one or the other motion filed therefor, and that the petition for an injunction be thereupon dismissed.

A True Copy.

Teste:

.....

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

38 And afterwards, to-wit: On the nineteenth day of January, 1909, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:—

Tuesday, January 19, 1909.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen,
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States for the Northern District of Illinois, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the order or decree

appealed from be, and the same is hereby reversed with costs, and that this cause be, and the same is hereby remanded to the said Circuit Court with direction to dismiss the bill of the Real Estate Company in conformity with one or the other motions filed therefor, and that the petition for an injunction be thereupon dismissed.

And afterwards, to-wit: On the nineteenth day of February, 1909, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:—

Friday, February 19, 1909.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen,
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for rehearing in this cause be, and the same is hereby overruled; and it is further ordered that the mandate in this cause be stayed until the further order of this Court.

Friday, February 19, 1909.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Peter S. Grosscup, Circuit Judge, presiding.
Hon. Francis E. Baker, Circuit Judge.
Hon. William H. Seaman, Circuit Judge.

Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

40 George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen,
Appellant,
1497 *vs*
Corn Products Refining Company.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the Opinion in the above entitled cause be amended by striking out the entire paragraph ocmmencing with the third line on the eleventh page, reading as follows:

"As the complainant Real Estate Company made its motion seasonably for dismissal of the pending bill, and was entitled to leave of Court to dismiss, as of course, thus removing cause for enjoining prosecution of the Harding bill, the order appealed from was unauthorized and must be reversed."

And subsiituting therefor the following:

"We are of opinion, that the motion for dismissal of the Real Estate Company's bill was not only seasonably made, but that it was entitled as well to leave of Court to dismiss so as to remove cause for enjoining the prosecution of the new bill, filed by a stockholder setting up ownership free from the challenge of title to maintain the original bill, and that the order appealed from was, therefore, unauthorized and must be reversed."

And afterwards, to-wit: On the fifteenth day of March, 1909, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Monday, March 15, 1909.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.
Hon. William H. Seaman, Circuit Judge.

Edward M. Holloway, Clerk.
Luman T. Hoy, Marshal.

George F. Harding, George F. Harding, Jr., A. B. Joyner and William J. Ammen, 1497 *vs* Corn Products Refining Company.	Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and the motion that mandate in this cause issue, now comes on to be heard on oral argument by Mr. William J. Ammen, counsel for appellants in support of said motion, and by Mr. Levy Mayer, counsel for appellee in opposition to said motion, and the appellants having agreed to accept one weeks' notice of the filing of a petition for writ of certiorari in the Supreme Court of the United States; It is now here ordered that the mandate in this cause be stayed until the further order of this Court, on condition that the appellee herein file its petition for a writ of certiorari in the Supreme Court of the United States on or before March 29, 1909.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 41, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel and Petition for Rehearing in the case of

George F. Harding, George F. Harding, Jr., A. B. Joyne and William J. Ammen
vs.
Corn Products Refining Company.

No. 1497, October Term, 1907, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this sixteenth day of March A. D. 1909.

EDWARD M. HOLLOWAY.

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1910.

IN THE MATTER OF THE APPLICATION

OF

GEORGE F. HARDING FOR A WRIT OF MANDAMUS DIRECTED TO THE HONORABLE ARTHUR L. SANBORN, DISTRICT JUDGE OF THE WESTERN DISTRICT OF WISCONSIN, HOLDING THE UNITED STATES CIRCUIT COURT IN AND FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION THEREOF, AND DIRECTED ALSO TO THE SAID CIRCUIT COURT.

BRIEF FOR PETITIONER.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

There never has been and it is to be hoped there never will be, anywhere, a case presenting a situation even resembling to any extent worth mentioning, the situation disclosed by the petition for mandamus in this case. Notwithstanding, however, the length of the petition, with its voluminous exhibits, the real question to be considered and decided will be found almost marvelous in its brevity and simplicity.

I.

By order entered on June 8, 1907, by the U. S. Circuit Court, Northern District of Illinois, Eastern Division, before Kenesaw Mountain Landis, District Judge, a suit in chancery theretofore brought in State Court by the Chicago Real Estate Loan & Trust Company, an Illinois corporation, as a stockholder of the Corn Products Company, against that company, and Corn Products Manufacturing Company, and Corn Products Refining Company, and certain individual defendants, was removed from said State Court to said Circuit Court, and the further prosecution of *that* suit enjoined, such action being on the motion of Mr. Levy Mayer as solicitor for said Manufacturing Company. (Part II, Exhibit A, pages 2-3, and page 10 of Petition.)

II.

On October 1, 1907, a motion was filed by said Real Estate Company, in its suit, to dismiss the same, without prejudice, and without prejudice to the right of cross-complainant, Joy Morton, to prosecute his cross-bill therein. This motion to dismiss was not included in the printed record in the Court of Appeals, but was filed therein on October 29, 1908, on suggestion of diminution of the record, as shown on pages 437-441 of Part II of "Exhibit A." This motion to dismiss could not then be heard by reason of the absence of the court. In the proceedings before Judge Landis in December, 1907, in the Real Estate Company's case, Mr. Mayer referred to these

early efforts to dismiss that suit, as shown on pages 173, 204-205 of Part II of "Exhibit A." In that same hearing before Judge Landis, Mr. Mayer stated that said cross-bill had been filed to prevent dismissal of the suit, as hown on page 204 of Part II of "Exhibit A." The answer filed by Joy Morton on June 14, 1907, set up that the holdings of said Real Estate Company of stock in said Corn Products Company were *ultra vires* and could not be made the basis for relief sought by said complainant, and his cross-bill filed on same date sought to have such stock holdings cancelled, and said Real Estate Company enjoined from exercising any rights as the holder thereof on the same ground, *ultra vires*. Please see that portion of said answer shown in the first paragraph on page 40 of Part II of "Exhibit A," and that portion of said cross-bill shown on pages 50-53.

III.

George F. Harding was not a party to said Real Estate Company's bill or to said cross-bill. In the removal proceedings in that case, Mr. Mayer's firm appeared, together with Mr. James M. Sheean, of the firm of Calhoun, Lyford & Sheean, as solicitors for said Corn Products Manufacturing Company in its petition for removal, and also for Joy Morton in his answer and cross-bill, and for the Corn Products Refining Company in its answer filed October 18, 1907, to the bill of complaint, in which answer, as shown on pages 66-72 of Part II of "Exhibit A," said Refining Company set up that said Real Estate Company had participated in and ratified and ap-

proved the acts complained of in the bill of complaint, etc., and that said Real Estate Company was barred from relief by virtue of *estoppel*, and by reason of its *laches* in the premises.

IV.

On October 25, 1907, said George F. Harding filed in the Superior Court of Cook County, Illinois, his bill of complaint, as a stockholder of said Corn Products Company, against that company, and said Refining Company, and said Manufacturing Company, and the Standard Oil Company of New Jersey, which was not a party to the Real Estate Company's suit, and against certain individuals, as defendants, some of which individuals were also defendants to the Real Estate Company's suit; and, on October 25, 1907, said Harding filed his amended bill in said Superior Court, against the same defendants named in said original bill, except that two individuals were named as defendants in the amended bill whose names were omitted by inadvertence in the prayer for process and prayer for relief in said original bill. In both of said bills said Harding was described as "a resident and citizen of the State of California," and the defendant corporations were described as New Jersey corporations. The residence or citizenship of any of the individual defendants was not stated in either bill. The defendants, Glass, Morton, Wagner and Calhoun, were duly served with summons in Cook County, Illinois, and an affidavit of Abner C. Harding dated October 23, 1907, and filed next day, in said Superior Court,

stated that certain of the individual defendants were non-residents of Illinois, naming them, but did not state the residence or citizenship of any of the defendants so served with summons. (Please see pages 4, 5 and the first three lines of page 6 of petition.)

V.

Pursuant to Illinois statute, said Harding served notices and supoenas to take the testimony of said Calhoun, Glass, Morton and others, before a Notary Public, in Chicago, beginning 11 a. m., ON NOVEMBER 4, 1907, as stated in the first part of page 6 of petition.

VI.

ON NOVEMBER 4, 1907, in said Real Estate Company's suit, Mr. Levy Mayer presented the petition of said Refining Company to said Circuit Court, without notice to said Harding or his solicitor, praying an injunction against the further prosecution of the said Harding suit, and for an order compelling dismissal thereof; and thereupon said Circuit Court, without notice to said Harding or his solicitor, entered an order, IN THAT SUIT, requiring said Harding and his solicitor to appear on November 12, 1907, and show cause why the prayer of said petition of that date should not be granted, and restraining the further prosecution of the Harding suit, or the taking of any steps whatsoever therein, until the hearing and disposition of said petition or motion of November 4, 1907. For contents of said petition and order November 4, 1907, please see pages 6-11 of Petition.

VII.

On November 12, 1907, said Harding filed his sworn answer to the said rule entered on November 4, setting up that he was not a party to *that* suit, and appeared specially to answer same, and answering the averments of said petition of November 4, also set up that he had no knowledge or notice of said proceedings of that date, and that said restraining order of that date was obtained to stop him from taking the testimony of said Morton, Glass and Calhoun, and protecting them from punishment for failing to obey the subpoenas served upon them, and that they were about to be proceeded against for such contempt when said restraining order of November 4 was obtained. Said answer insisted that said Circuit Court had no jurisdiction, or authority, or power, over said Harding, or his solicitor, or to restrain the prosecution of said suit in the Superior Court, and that said order of November 4, 1907, was obtained by deceit practiced upon the court, and "that it was improper that one who is not a party to the case before this court should be restrained from enforcing his own rights in the state courts"; and that said order of November 4 "was and is wholly void, and of no effect, because of the entire lack of jurisdiction of this Honorable Court to enter the same"; and that by such answer he did not intend "to submit himself to the jurisdiction of this court, in the premises, but denies the same." (Please see the 9th paragraph of Petition, pages 11-15, stating contents of said answer filed November 12, 1907.)

VIII.

The hearing of the said rule entered on November 4, began on November 12, before said District Judge Kenesaw Mountain Landis, and, in the course of that hearing, on that date, said District Judge, of his own motion, entered an order in said Real Estate Company's case, requiring said George F. Harding, and his solicitor, Albert B. Joyner, and a son of said Harding, the president of said Real Estate Company, and William J. Ammen, then the solicitor of record for said Real Estate Company, to show cause next morning why they should not be attached for contempt for violating said order of June 8, 1907, *by the bringing and prosecution of said Harding suit in said State Court.* (Please see 10th paragraph of Petition, page 15.)

IX.

On November 13, 1907, said Harding, and the other three respondents thereto, answered said rule under oath; and on December 26, 1907, under date of December 13, 1907, said District Judge entered an order in said Real Estate Company's suit, enjoining the further prosecution of said suit brought by said Harding. (Please see 11th paragraph of Petition, pages 15-19, for statement of said proceedings before said District Judge, and the contents of the said order entered on December 26, under date of December 13, there quoted.) As recited in that order entered on December 26, said District Judge had, in the meantime, on motion of said Mayer, entered an order, wholly without notice, removing the said

Harding case to said Circuit Court, and enjoining the further prosecution of that case in said State Court, without such State Court ever having had an opportunity to consider the removal papers in that case, as will be fully shown later in this brief.

X.

On December 26, 1907, before the entry of said injunction order entered on that date, under date of December 13, said Real Estate Company presented to said District Judge, holding said Circuit Court, its motion to dismiss its said suit, which was resisted by said Mayer, and denied by the court. Said motion to dismiss then filed and presented, omitting title, and signature of counsel, as shown on page 115 of Part II of "Exhibit A," reads as follows:

> "Now comes said complainant, by William J. Ammen, its solicitor, herein, *and, having heretofore, namely, on October 1, 1907, filed herein its motion in writing to dismiss its bill of complaint* herein, without prejudice and without prejudice to the right of cross-complainant to prosecute his cross-bill filed herein, said complainant *now* moves the court to grant *its said* motion herein, and dismiss its said bill of complaint herein, without prejudice and without prejudice to the right of said cross-complainant to prosecute his said cross-bill herein."

XI.

Upon denial of the above motion to dismiss the bill, as above set forth, said Real Estate Company thereupon presented in order, before entry of said injunction order on December 26, 1907, four other

motions, in different forms, to dismiss its said bill of complaint. All the said motions to dismiss then presented, together with the orders then entered denying same, are shown on pages 115-122 of Part II of "Exhibit A," and the proceedings on the hearing thereof, as stated in the Certificate of Evidence signed by Judge Landis, are shown on pages 218-220. (Please see 12th paragraph of Petition, pages 19-20.)

XII.

On appeal to the United States Court of Appeals, Seventh Circuit, that court, on January 19, 1909, delivered its opinion, holding that the said motions to dismiss were seasonably presented; and, by its order of same date, directed that one or other of said motions to dismiss be allowed by the Circuit Court, and that said motion (or petition) filed November 4, 1907, be dismissed—all at the cost of the appellee, the said Corn Products Refining Company. For references to said opinion and order of Court of Appeals, please see 13th paragraph of Petition, pages 20-21.

XIII.

By Petition for Rehearing, denied by said Court of Appeals, and by its subsequent order entered in order to give time to said appellee to apply to the Supreme Court for *certiorari*, issue of mandate was stayed by said Court of Appeals, on condition that petition for *certiorari* be filed on or before March 29, 1909. (Petition, page 21.) On March 27, 1909, said Mayer filed petition of said Refining Company

in the Supreme Court for *certiorari,* together with his brief in support thereof, and on April 2, 1909, said Harding filed his brief and reply thereto, and thereafter remained in or near the City of Washington awaiting decision on such petition, and same was denied by Supreme Court on April 12, 1909. (Petition, page 22.)

XIV.

On the next day, April 13, 1909, said Mayer filed a motion of said Refining Company in said Court of Appeals to modify said final judgment, together with his brief and argument in support thereof; and, on the next day, April 14, said motion was argued orally, and taken under advisement, and denied on April 21, 1909, as stated in 16th paragraph of Petition, page 22. As there stated, a copy of said motion to modify said judgment, marked "Exhibit B," is annexed to the petition, and the same is shown on page 85. As there shown, it will be seen that said motion to modify judgment was, in effect, a second petition for rehearing. On June 23, 1909, said Mayer moved said Court of Appeals to retax the costs in said appeal, which motion was later denied, as stated in 17th paragraph of Petition.

XV.

REMOVAL PROCEEDINGS IN HARDING CASE.

On *November 5, 1907,* THE NEXT DAY AFTER SAID INJUNTION ORDER OF NOVEMBER 4, WAS ENTERED IN THE FEDERAL COURT, said Mayer (as associate counsel with and in the name of Mr. Sheean) served notice

on Mr. Joyner, whose name was signed to the Harding Bill of Complaint in the Superior Court as solicitor for complainant therein, stating in said notice that the petition of said Manufacturing Company praying for removal of said Harding case to said U. S. Circuit Court would be presented to Judge Ball, of said Superior Court, on the next morning, November 6. (Petition, page 23.) Pursuant to said notice of November 5, said Levy Mayer appeared before said Judge of the Superior Court, at the hour mentioned in said notice, on November 6, and presented said Removal Petition, *alleging therein that said Harding at the time of the beginning of his said suit was and continuously since has been* A RESIDENT AND CITIZEN OF CALIFORNIA, and alleging the citizenship of said four New Jersey corporations, and further *alleging* the *existence* of a *separable* controversy BETWEEN SAID MANUFACTURING COMPANY AND SAID HARDING, and that the amount in controversy, exclusive of interest and costs, exceeded the sum of two thousand dollars, and further alleging that removal bond had been filed, and praying that same be approved, and that order be entered removing the cause to said U. S. Circuit Court, and that no further proceedings be had therein in State Court. *No attempt even was made in such removal papers to point out the nature or character of such* ALLEGED *separable controvery;* and neither in those papers, nor in any other paper or record then or thereafter filed, or entered, or presented in or to said State Court, was there any allegation or showing whatsoever as to the residence or citizenship of said Harding, except as above shown, or any allegation or

showing as to the residence or citizenship of any of the individual defendants, except as stated in said affidavit of Abner C. Harding, as above shown. Said removal papers were filed in the State Court on November 5, 1907. For further references thereto, please see 19th paragraph of Petition, pages 19-25.

XVI.

Upon presentation of said removal papers to Judge Ball by said Mayer, on the morning of November 6, said Harding appeared and stated that he desired to be heard in opposition to such removal; and the court thereupon announced that the same could not be heard or considered *then*, and postponed the hearing to the opening of court next morning, November 7, 1907, *to which postponement neither said Mayer, nor any other solicitor or party suggested any objection. Without notice, however,* AND WITHOUT FURTHER APPEARANCE IN THE STATE COURT, OR FURTHER ACTION BY THAT COURT, said Mayer appeared *on the same date,* November 6, before said Judge Landis, then holding said U. S. Circuit Court, and obtained an order granting leave to said Manufacturing Company to file in said Circuit Court, and ordering filed therein, a transcript of the record of said Superior Court, *and enjoining said Harding,* his agents, representatives, counsel, solicitors and attorneys, *from proceeding further with the prosecution of said cause in the State Court,* "ALL UNTIL THE FURTHER ORDER OF" said Circuit Court, a copy of which order is shown on page 411 of Part II of "Exhibit A." (Please see 21st and 22d paragraphs of Petition, pages 25-26.)

XVII.

HEARING OF HARDING'S MOTION TO REMAND REFUSED.

Said Harding had no knowledge or notice of the said order of November 6, 1907, or of the filing of the said transcript of record in his suit in said U. S. Circuit Court that day, until on or about November 12, 1907, and, at some time prior to December 13, 1907, he applied to said Judge Landis, in chambers, and inquired if he would hear a motion to remand his said suit to the State Court, but said Judge finally stated that he did not deem it proper to hear such a motion to remand "until the court had disposed of the said motion for an injunction which the court then had under advisement." By reason thereof, and by reason of said restraining order entered November 4, 1907, said Harding did not immediately file and present a formal motion to remand his suit. On December 13, 1907, said Judge Landis orally announced his decision in relation to the matter of said injunction, in part, and, as to said alleged contempt, as shown in his certificate of evidence as printed on pages 168-441 of Part II of "Exhibit A." The portion of said certificate of evidence showing said oral opinion, and the proceedings immediately following the delivery thereof, including such refusal to hear motion to remand, is shown on pages 213-218 of Part II of said "Exhibit A." (Please see 23d paragraph of Petition, pages 27-28.)

XVIII.

WRITTEN MOTION TO REMAND HARDING SUIT FILED DECEMBER 23, 1907.

On December 23, 1907, said Harding filed in said U. S. Circuit Court his motion in writing to remand his cause to said Superior Court, *appearing specially for that purpose, only,* and saving and reserving all objections to the removal papers, and denying the jurisdiction of said Federal Court, and stating the grounds upon which he claimed the right to such remand. Said motion to remand is shown, in full, in 24th paragraph of Petition, pages 28-30, the same having been signed by said Harding alone, as the moving party, and as of counsel in the case. As shown in 26th paragraph of Petition, pages 30-39, particularly pages 33-34, the hearing before said Judge Landis was adjourned from December 13, 1907, to December 23, and on that date Mr. Mayer presented draft of order which he then *claimed* should be entered in the Real Estate Company's suit, and settlement of the terms thereof was postponed to December 26, 1907, with the understanding that Mr. Ammen would furnish to Mr. Mayer on or before December 25, a draft of the order proposed to be entered, which was done by said Ammen, as shown on page 218 of Part II of said "Exhibit A," notwithstanding the statement of said Mayer there shown to the contrary. On December 25, 1907, there was also served upon solicitors for defendants in said Harding suit, a notice entitled therein, signed by said Harding, only, stating that he, said Harding, would on December 26, 1907, at 10 a. m., *appearing*

specially for such purpose, only, present to said Circuit Court before said Judge Landis his said motion to remand filed in said cause, and move the court to grant the same. (Please see 25th paragraph of Petition, page 30.)

XIX.

HEARING OF MOTION TO REMAND AGAIN REFUSED.

Pursuant to said notice served on December 25, said Harding on the morning of *December 26, 1907,* presented his said motion to remand, and insisted upon *a hearing* thereof, but such *hearing* was denied by the court, notwithstanding the persistence of said Harding that the same be heard, said Judge Landis stating as ground for refusing such *hearing* that the injunction order *then* about to be entered by him UNDER DATE OF DECEMBER 13, 1907, *restraining all proceedings,* whatsoever, in the *Harding* suit, INCLUDING EVEN THE BRINGING ON FOR HEARING OF ANY MOTION TO REMAND THE SAME. Please see the quotations from the Certificate of Evidence signed by Judge Landis, presented in 26th paragraph of Petition, pages 30-39, showing the refusals of the court to hear said motion to remand, and the reasons there stated for such refusals, and showing, also, the objections and exceptions of said Harding, and the three other respondents, to the court's action in then dating back said injunction order to December 13, 1907, etc.

XX.

ATTEMPT TO "SUPPLEMENT" REMOVAL PETITION.

On November 6, 1907, the same day said order of removal was made by Judge Landis in the Harding case, said Mayer, as solicitor for said Manufacturing Company, filed in said Harding suit in said U. S. Circuit Court, without leave of court, and without notice to or consent of said Harding, a so-called "Supplement" to the removal petition theretofore filed in the State Court, as already shown, setting forth in said "Supplement" the residence and citizenship of the individual defendants in that suit, and stating therein that said defendants Glass, Calhoun, Morton and Wagner were, at the time of the commencement of said suit, and continuously thereafter had been, citizens and residents of the City of Chicago, *Illinois*, and the defendant Herget, a citizen and resident of Pekin, *Illinois*. (Please see 27th paragraph of Petition, pages 39-40.)

XXI.

ATTEMPTED AMENDMENT OF REMOVAL PETITION.

On April 15, 1909, while said motion to modify judgment of Court of Appeals was still held under advisement by that court, and while said Harding was still in the East awaiting information with reference to decision of Supreme Court on said petition for *certiorari*, and to procure a certified copy thereof, *and while the order staying mandate of Court of Appeals was still in full force and effect*, said

Mayer served said Ammen, *whose appearance had never been entered in the Harding suit*—the said appearance of said Harding therein in and by his said motion to remand being the only appearance ever entered therein—a notice stating that he, said Mayer, would, at 10 a. m., on April 16, 1909, present to said Judge Landis a motion (or petition) of said Manufacturing Company *for leave to amend said removal petition in the said Harding suit.* (Please see 28th paragraph of Petition, pages 40-41.)

XXII.

As to the proceedings before Judge Landis on April 16, 1909, pursuant to said notice, including the *special* appearance then filed by said Ammen, and changed by Judge Landis after the filing thereof, and the order then entered *against the objections and protests of said Ammen,* IN THE ABSENCE OF SAID HARDING, and the stipulation then *exacted* in and by the order then entered granting leave to file said petition for leave to amend removal petition, and postponing the hearing thereof to April 23, 1909, please see paragraphs 29 to 31, inclusive, of the Petition, pages 41-43, including Exhibits "C," "D," "E," and "F" there referred to and shown on pages 126-130 as such exhibits. By said stipulation thus *required* from said Ammen by the court, *at the instance of said Mayer,* AS A CONDITION FOR THE GRANTING OF ONE WEEK'S POSTPONEMENT OF THE HEARING OF THE SAID MOTION TO AMEND REMOVAL PETITION IN ORDER THAT SAID HARDING MIGHT IN THE MEANTIME RETURN TO CHICAGO, from the East, he, said Harding,

was prevented and debarred from moving for issue of mandate of said Court of Appeals, and he, and the others of said appellants, and said Real Estate Company, and their respective solicitors, were thereby debarred from taking any action or steps, whatsoever in said Court of Appeals, or in said Circuit Court in any or either of said cases, until after the hearing and decision *of record* of said petition of said Manufacturing Company for leave to amend its said original removal petition in said *Harding* suit. (Please see 33rd paragraph of Petition, pages 43-44.)

XXIII.

On April 23, 1909, said Judge Landis, of his own motion, selected the Honorable Arthur L. Sanborn, District Judge of the U. S. District Court for the Western District of Wisconsin, to hear said motion for leave to amend said removal petition; and said Judge Sanborn began such hearing on that date, and took same under advisement on May 4, 1909; and, on May 15, 1909, filed his opinion holding that amendment should be allowed as to the residence and citizenship of said Harding, as stated in 34th paragraph of Petition on page 44. On May 1, 1909, by leave of said Judge Sanborn, said Harding filed his said "OBJECTIONS AND ANSWER" to said petition for leave to amend removal petition. In view of the importance of same, in support of this petition for mandamus, the Supreme Court is respectfully requested to have read, *as a part of this Statement of the Case,* the 35th paragraph of the Petition, pages 45-52, showing, and quoting at length from,

said "Objections and Answer," so filed by said Harding. *From a reading of the same, the present objections of Mr. Harding to the jurisdiction of the Circuit Court, and the grounds* NOW *relied upon in support of this petition for mandamus will be seen.*

XXIV.

Against the objection of said Harding, a so-called "Replication" was filed by said Mayer on May 4, 1909, as stated in the 36th paragraph of the Petition, page 52.

XXV.

For contents of the said Opinion filed May 15, 1909, please see 37th paragraph of Petition, pages 53-58.

XXVI.

On May 22, 1909, said Harding moved the court to strike said "Replication" from the files, etc., and that motion was denied by order of June 12, 1909, as stated in 38th paragraph of Petition, page 58.

XXVII.

AMENDMENT FILED JUNE 14, 1909, TO REMOVAL PETITION.

By this amendment of June 14, 1909, as stated in 39th paragraph of Petition, page 58, and shown as "Exhibit I" on pages 138-39, it was *attempted* to amend said original removal petition *by striking therefrom its averment that said Harding was a citizen and resident of* CALIFORNIA, and *inserting,*

in lieu thereof, an averment that he was a citizen and resident of ILLINOIS. NO OTHER AMENDMENT WAS ALLOWED OR FILED TO ORIGINAL REMOVAL PETITION. The order of May 15, 1909, allowing such amendment is shown as "Exhibit G" on pages 131-132 of Petition.

XXVIII.

The mandate of said Court of Appeals was issued on June 28, 1909, and, on the next day, said Real Estate Company moved before Judge Sanborn for order obeying said mandate that day filed in that case. Said motion was then taken under advisement and allowed on July 1, 1909. Said mandate recited that the order of the Court of Appeals staying same was vacated by that court on May 19, 1909. (Please see 40th paragraph of Petition, page 59.) *Said Harding being thus free,* FOR *the first time, to bring on for hearing his said motion to remand filed December 23, 1907*—THE SAID PRETENDED AND VOID AMENDMENT PROCEEDINGS HAVING OCCURRED IN THE MEANTIME—he, on June 30, 1909, after due notice to said Mayer, presented to said Judge Sanborn his verified petition dated June 29, 1909, PRAYING THAT SAID AMENDMENT PROCEEDINGS BE TREATED AS NULL AND VOID, *for the reasons and upon the grounds stated in his said petition presented June 30,* AND FURTHER PRAYING THAT HIS SAID ORIGINAL MOTION TO REMAND, FILED DECEMBER 23, 1907, BE NOW GRANTED, *on the record as it* THEN *existed,* NOTWITHSTANDING SAID PRETENDED AND VOID AMENDMENT PROCEEDINGS, etc. *It seems quite impossible for the Supreme Court to intelligently deal with this petition for mandamus*

without a careful reading of the said petition presented June 30, 1909. WE THEREFORE EARNESTLY REQUEST THE COURT TO READ THE SAME, AS A PART OF THIS STATEMENT OF THE CASE, AS QUOTED IN THE 41ST PARAGRAPH OF THIS PETITION FOR MANDAMUS, PAGES 59-68.

XXIX.

On July 1, 1909, said Judge Sanborn entered an order dismissing the said Real Estate Company's suit, and dismissing said petition of November 4, 1907, *in obedience to said mandate.* Said order of July 1, referred to said mandate as "having *this day* been filed herein," but the same was, in fact, filed on June 29, as shown, and on that day said order entered on July 1 was actually prepared and put into the hands of the court, and taken under advisement, and entered on July 1, as thus prepared and submitted on June 29; and said petition presented June 30, referred to said order, *when entered,* and made the same an exhibit thereto. On July 1, 1909, after entry of said order in the Real Estate Company's suit, said Harding again presented his said petition dated June 29, 1909, and presented next day, and same was then taken under advisement. (Please see 42nd paragraph of Petition, pages 68-69.)

XXXI.

On July 9, 1909, Judge Sanborn entered two orders (Exhibits "K" and "L"), in the first of which, *on motion of defendants, he denied the prayer contained in said petition presented June 30th, that the*

original filed motion to remand be granted; and, in the other of which, he denied leave to file that petition, and fixed the time for the taking of proof on both sides on the issue of citizenship—said petition of June 30th, having reaffirmed the original allegation in the bill as to citizenship, and denied the truth of the said *pretended* amendment to removal petition in regard thereto, this being done by way of precaution, in said petition presented June 30th, lest such prayer for remand, though based on original motion to remand as filed, might be claimed by opposing counsel to operate as admission of the truth of said *pretended* amendment; and, by way of precaution, and for greater safety, as stated in said petition presented June 30th, that petition asked leave to formally join issue on such amendment, *without waiving the contentions set forth in the petition, in the event the prayer* thereof should be denied. Please see 43rd paragraph of this petition for mandamus, pages 69-70, referring to said two exhibits "K" and "L," and quoting at length from said Exhibit "K," and also the said exhibits as printed on pages 140-143, and the explanatory note as to the order of proceedings on July 9th, on page 70 of this petition.

By said first order of July 9, 1909, the court, having first recited the special appearance of Mr. Harding for the purpose only of securing allowance of his original motion to remand filed December 23, 1907, "and for the same order which he claims he was entitled to have made on December 26, 1907, when he moved the court to grant said motion of December 23, 1907," and further recited, in part, the efforts of Harding, on and prior to December

26, 1907, to get a hearing of motion to remand and after finding therein THAT SAID HARDING HAD NO OPPORTUNITY TO HAVE HIS SAID MOTION TO REMAND HEARD UNTIL JUNE 30, 1909, WHEN SAID MANDATE WAS FILED IN THE REAL ESTATE COMPANY'S CASE, "*directing the reversal of the said injunction order of December 13, 1907, so entered December 26, 1907,*" the court, thereupon, *on motion of defendants,* ordered "*that the* SAID *motion to remand this suit to the state court be, and the same is, hereby denied.*"

This language in said order of July 9, 1909, although evidently intended to show that it was entered *as a disposition of said petition presented June 30th,* possibly left room for doubt or dispute on that point. So, on account of this *possible* ambiguity, Mr. Harding presented on January 26, 1910, his motion to set aside said order of July 9th, *on the ground* that it *purported* to deny a motion to remand *then* made, *for the first time,* instead of being based on the said petition presented June 30th; but the court, by its order of February 12, 1910, denied said motion of January 26, and struck the same with its attached affidavits from the files, for the reason as stated in said order of February 12th, that it already sufficiently appeared from the record, including the certificate of evidence dated November 19, 1909, that said order of July 9th, was in fact a denial of the prayer of said petition presented June 30th, which petition was duly preserved in said certificate of evidence, wherein it was also stated that that was the same petition which was not permitted to be filed as stated in the last sentence of the other order entered on July 9th. Said order of February 12, 1910,

also recites that the early efforts of said Harding to have a hearing of his motion to remand already sufficiently appeared in Judge Landis' certificate of evidence shown in the large printed record inserted as part of the proof in said certificate of evidence dated November 19, 1909.

As to said proceedings of January 26, 1910, and said order of February 12, 1910, please see 46th, 47th and 48th paragraphs of this petition for mandamus, pages 74-81, and Exhibits "O" and "P" there referred to and shown on pages 150-156, and as to said recitals in certificate of evidence, please see 49th paragraph of petition, pages 80-81.

NOTE: We have just this moment discovered that the date of said order of February *12*, 1910, is given on page 78 of the petition as February *10th*, but the correct date, February 12, is stated in the heading of that order shown as Exhibit "P," on page 158.

XXXII.

All the efforts of said Harding to obtain allowance of his original motion to remand. having been thus defeated, but, *in the meantime*, said *pretended* amendment having been allowed, and thus got into the record, for the time being at least, he, thereupon, filed an answer to said removal petition, as amended, reaffirming his original allegation as to citizenship, and denying the truth of said *pretended* amendment in regard thereto. As stated in 44th paragraph of petition, page 71, that answer was in fact prepared on July 1, but was held back for the court's ruling on said petition presented June 30th. Such answer filed July 9, 1909, insisted that all the said amend-

ment proceedings were void, and demanded allowance of his original motion to remand upon the basis and the grounds stated in said petition presented June 30th, and stated that issue was thus joined on such question of citizenship, WHILE DENYING ALL JURISDICTION OF THE COURT EXCEPT TO REMAND THE CASE *in order that the entire question of remand might be disposed of by the Circuit Court* AND THE WAY BE THUS CLEARED FOR PETITION TO THE SUPREME COURT FOR A WRIT OF MANDAMUS TO COMPEL REMAND TO THE STATE COURT. Please see extended quotations from said answer filed July 9, 1909, on pages 71-74 of this petition for mandamus, and a copy of said order annexed as "Exhibit K," on pages 140-141. The other order of July 9, 1909, is shown as "Exhibit L," on page 143. A copy of said answer referred to in this petition, page 71, as "Exhibit M," is shown on pages 144-148, with the heading "Exhibit M," inadvertently omitted by the printer at the top of page 144.

XXXIII.

Mr. Harding continued to insist that the court had no jurisdiction except to remand his case to the State Court, as shown, for example, in his other motion of January 26, 1910, quoted in full in the 46th paragraph of the petition, pages 74-75, wherein he moved for a certain order in relation to the taking of testimony.

> "*while objecting and protesting, as heretofore, against the authority of the court to allow the amendment heretofore allowed to the removal petition in said cause*, under and pursuant to which amendment said issue of citizenship has

been made, as stated in the answer of said complainant thereto, *the contention of said complainant still being that said order allowing the said amendment, and all proceedings thereunder, and pursuant thereto, are void, and without authority of law,* THESE OBJECTIONS BEING HERE RESTATED IN ORDER TO AVOID ANY WAIVER, OR CLAIM OF WAIVER UPON THE PART OF SAID COMPLAINANT, IN REGARD THERETO.''

XXXIV.

Said certificate of evidence, signed November 19, 1909, stated that said Harding, in support of his said petition presented June 30, 1909, and preserved in said certificate of evidence, offered the entire evidence shown in such certificate of evidence, together with the said mandate filed in the Real Estate Company suit, a copy of which mandate is thereupon inserted in said certificate of evidence. (Please see 49th paragraph of the petition for mandamus, pages 80-81.)

XXXV.

The hearing on such issue of citizenship closed on July 18, 1910, and on October 25, 1910, Judge Sanborn filed his opinion, deciding such issue against said Harding, as stated in the 50th paragraph of this petition, page 81. As there stated, a copy of said opinion is annexed as ''Exhibit Q,'' as shown on pages 160-176.

XXXVI.

On October 29, 1910, Mr. Mayer served notice that he would on November 2, 1910, move for order pursuant to said opinion of October 25th, as stated in

51st paragraph of petition, page 81, and said notice annexed, as "Exhibit R," is shown on page 177.

XXXVII.

Pursuant to said notice such order was entered on November 2, 1910, under date of October 25, 1910, against the objections of solicitor for said Harding, a copy of which order is annexed as "Exhibit S," pages 178-179, and same is quoted in the 52nd paragraph of petition, pages 81-83.

XXXVII.

No certificate of evidence has yet been filed or presented as to proceedings subsequent to November 19, 1909, but a copy of the shorthand reporter's transcript of the proceedings of November 2, 1909, as stated in 53rd paragraph of petition, page 83, is annexed as "Exhibit T," and shown on pages 180-191, from which will be seen the objections then renewed to the jurisdiction of the court, and the statement made by Mr. Mayer that the costs to which his client was entitled, as he claimed, on the taking of the volumes of testimony on such issue, etc., already amounted to thousands of dollars, and procured, in the order then entered, a judgment for such costs to be taxed by the clerk, *and order that execution issue therefor.*

XXXVIII.

It will be observed that said order entered on November 2, 1909, under date of October 25th, does not purport to deny any motion to remand made sub-

sequent to July 9, 1909, but expressly states that such order was entered as a denial of the motion to remand as made and presented in and by said answer of Harding, filed on July 9, 1909.

XXXIX.

The 54th paragraph of petition sets forth the present contentions of petitioner that said Judge Sanborn and said Circuit Court and each of them were and are wholly without jurisdiction in his suit, and have been and still are without jurisdiction therein except to remand the same to the State Court, and that the allowance of said amendment to said removal petition, and all action thereunder or by virtue thereof, was and is wholly null and void by reason of such lack of jurisdiction, and such lack of power, and that said Circuit Court should be required to remand said case to the State Court, and if need be required to vacate all orders standing in the way of such remand, if any there be, and to desist from further action under claim of jurisdiction in said cause, except to remand the same to the State Court. The prayer of the petition then follows on page 84. The petition is signed by counsel and sworn to by said Harding, and twenty-five printed copies thereof, with the annexed exhibits, have been furnished to the Clerk of the Supreme Court.

POINTS RELIED ON BY PETITIONER.

These points are quite obvious from the foregoing statement of the case, but we will here attempt to restate the same briefly.

1. **The original removal petition, whether considered alone or in connection with the entire record then before the State Court, not only failed to show a removable case, but affirmatively showed that the case was not removable under the law, on the ground of diverse citizenship.**

2. **No separable controversy was pointed out in said original petition for removal, as required by the decisions.**

3. **The claim of separable controversy between said Corn Products Manufacturing Company, and said Harding, is found so absurd upon a mere cursory reading of the bill of complaint that the Circuit Court should not have considered the same, even for a moment; and relief by mandamus should not be refused on the ground that a decision of that question involved judicial discretion, although the exercise of judicial discretion on such a question might be required in a case where such question appears to be reasonably disputable.**

4. **Even if such separable controversy existed, the citizenship of the alleged parties thereto was not such as to make the case removable, under the law.**

5. **The alleged removal was void upon the fur-**

ther ground that the State Court was not permitted to examine, and consider, and pass upon, the removal petition.

6. Said order of the Circuit Court entered on November 6, 1907, ordering the transcript of record of State Court filed in Circuit Court, and enjoining Harding from the further prosecution of his suit in the State Court, until the further order of the Circuit Court, was void.

7. The so-called supplement filed in the Circuit Court November 6, 1907, was unauthorized and void, and did not and could not help out the original removal petition filed in the State Court.

8. Said Harding is not chargeable with laches by reason of the long delay in the hearing of his motion to remand filed on December 23, 1907.

9. Said Harding has never waived his right to have said original motion to remand allowed.

10. The Circuit Court had no power to allow the amendment to the removal petition changing the vital averments made in said original removal petition filed in the State Court.

11. The Circuit Court had no power to allow such amendment upon the additional ground that the order staying mandate of the Court of Appeals was still in full force and effect, and the pendency of the appeal was recognized by the motion of appellee therein to modify the judgment of the Court of Appeals, which motion was under advisement at the time the petition for leave to amend the original removal petition was permitted to be filed.

12. The order permitting such petition to amend to be filed, and the order allowing such amendment to be filed, and the said amendment so filed to petition for removal, and all subsequent proceedings based thereon, were wholly without power or jurisdiction of the Circuit Court, and void.

13. It clearly appearing that said Harding will be entitled to a remand of his case after a tedious and expensive hearing on the merits, on appeal from whatever decree may be then entered, this should be duly considered by the Supreme Court, as even the certainty of such ultimate remand does not constitute an adequate remedy in the premises.

14. Upon the entire record the relief sought by this petition for mandamus should be granted by the Supreme Court.

BRIEF OF ARGUMENT.

1. The original removal petition, whether considered alone or in connection with the entire record then before the State Court, not only failed to show a removable case, but affirmatively showed that the case was not removable under the law, on the ground of diverse citizenship.

In re Moore, 209 U. S., 490.

Ex parte Wisner, 203 U. S., 449, citing cases.

Southern Pacific Co. v. *Burch,* 152 Fed., 168.

Goldberg, etc., Co. v. *German Ins. Co.,* 152 Fed., 831.

Yellow Aster, etc., Co. v. *Crane Co.,* 150 Fed., 580.

Gillespie v. *Pocahontas, etc., Co.,* 160 Fed., 742.

Blunt v. *Southern Ry. Co.,* 155 Fed., 499.

Boston, etc., Mining Co. v. *Montana Ore, etc., Co.,* 188 U. S., 632, 640.

In re Winn, 213 U. S., 464.

McClellan v. *McKane,* 159 Fed., 165.

Hooc v. *Gammon,* 166 U. S., 395.

2. No separable controversy was pointed out in said original petition for removal, as required by the decisions.

Gibbs v. *Crandall,* 120 U. S., 105, pp. 108-9, quoting from *Gold Washing & Water Co.* v. *Keyes,* 96 U. S., 199.

City of Newcastle v. *Postal, etc., Co.,* 152 Fed., 572.

3. The claim of separable controversy between said Corn Products Manufacturing Company, and said Harding, is found so absurd upon a mere cursory reading of the bill of complaint that the Circuit Court should not have considered the same, even for a moment; and relief by mandamus should not be refused on the ground that a decision of that question involved judicial discretion, although the exercise of judicial discretion on such a question might be required in a case where such question appears to be reasonably disputable.

We deem it unnecessary to cite authorities as to the test of a separable controversy.

4. Even if such separable controversy existed, the citizenship of the alleged parties thereto was not such as to make the case removable, under the law.

Please see the authorities above cited in support of Point 1. We deem it unnecessary to cite further authorities on this point.

5 The alleged removal was void upon the further ground that the State Court was not permitted to examine, and consider, and pass upon, the removal petition.

Please see authorities cited below under Point 10.

6. Said order of the Circuit Court entered on November 6, 1907, ordering the transcript of record of State Court filed in Circuit Court, and enjoining Harding from the further prosecution of his suit

in the State Court, until the further order of the Circuit Court, was void.

Please see authorities cited below under Point 10.

7. The so-called supplement filed in the Circuit Court November 6, 1907, was unauthorized and void, and did not and could not help out the original removal petition filed in the State Court.

Please see authorities cited below under Point 10.

8. Said Harding is not chargeable with laches by reason of the long delay in the hearing of his motion to remand filed on December 23, 1907.

It abundantly appears that defendants were fully advised from beginning to end that Harding denied the jurisdiction of the Circuit Court.

9. Said Harding has never waived his right to have said original motion to remand allowed.

We submit that this abundantly appears from this entire record.

10. The Circuit Court had no power to allow the amendment to the removal petition changing the vital averments made in said original removal petition filed in the State Court.

Powers v. *Chesapeake & O. R. R. Co.*, 169 U. S., 92, p. 101, citing cases.

Shane v. *Butte, etc., Co.*, 150 Fed., 801, reviewing and quoting from many other decisions.

Crehore v. *Ry. Co.*, 131 U. S., 240.

Jackson v. *Allen*, 132 U. S., 27.

Graves v. *Corbin*, 132 U. S., 572, p. 590.

Martin's Admr. v. *R. R. Co.*, 151 U. S., 673, page 691.

Carson v. *Dunham*, 121 U. S., 421, p. 427.

Fife v. *Whittell*, 102 Fed., 537.

Dalton v. *Milwaukee Ins. Co.*, 118 Fed., 876.

Stone v. *South Carolina*, 117 U. S., 430.

Cameron v. *Hodges*, 127 U. S., 322.

Moon on Removal of Causes, Sec. 165.

Fitzgerald v. *Mo. Pac. Ry. Co.*, 45 Fed., 812.

Macey Co. v. *Macey*, 135 Fed., 725, pp. 729-730, citing cases.

Santa Clara County v. *Goldy Mach. Co.*, 159 Fed., 750.

Wallenburg v. *Mo. Pac. Ry. Co.*, 159 Fed., 217.

Healy v. *McCormick*, 157 Fed., 218, citing the *Crehore* case, *supra*.

Holton v. *Helvitia, etc., Co.*, 163 Fed., 659.

Kinney v. *Columbia Assn. Co.*, 191 U. S., 78.

Murphy v. *Gold Co.*, 98 Fed., 321.

11. The Circuit Court had no power to allow such amendment upon the additional ground that the order staying mandate of the Court of Appeals was still in full force and effect, and the pendency of the appeal was recognized by the motion of appellee therein to modify the judgment of the Court of Appeals, which motion was under advisement at the time the petition for leave to amend the original removal petition was permitted to be filed.

Please see shorthand reporter's transcript showing the proceedings before Judge Landis on April 16,

1909, "Exhibit D," to the petition, pages 106 and 115, wherein it appears that Mr. Mayer stated that the Court of Appeals had the day before permitted a re-argument of the entire case, and also stated he wanted an immediate order permitting his petition for leave to amend to be filed so as to prevent application for mandate, etc.

12. The order permitting such petition to amend to be filed, and the order allowing such amendment to be filed, and the said amendment so filed to petition for removal, and all subsequent proceedings based thereon, were wholly without power or jurisdiction of the Circuit Court, and void.

Please see authorities cited above under Point 10.

13. It clearly appearing that said Harding will be entitled to a remand of his case after a tedious and expensive hearing on the merits, on appeal from whatever decree may be then entered, this should be duly considered by the Supreme Court, as even the certainty of such ultimate remand does not constitute an adequate remedy in the premises.

We deem it unnecessary to cite decisions of this court as to when a writ of mandamus should be issued other than the *Wisner* case and *Moore* case, above cited under Point 1.

14. Upon the entire record the relief sought by this petition for mandamus should be granted by the Supreme Court.

Please see authorities above cited under Points 2 and 10.

FURTHER REFERENCES TO THE DECISIONS.

I.

No cause can be removed from the State Court to the Circuit Court of the United States unless it could have been originally brought in the latter court. *Boston, etc., Mining Company* v. *Montana Ore, etc., Company,* 188 U. S., 632; *ex parte Wisner,* 203 U. S., 449; *In re Winn,* 213 U. S., 458.

In such a case the consent of the parties cannot confer jurisdiction. *Louisville and Nashville R. R. Co.* v. *Motley,* 211 U. S., 149.

Here there was no waiver by appearance, answer or pleading to the merits.

In *Insurance Company* v. *Dunne,* 19 Wallace, 214, it is distinctly held that if a party failed in his efforts to obtain a removal, and was forced to trial he lost none of his rights by defending against the action.

In *Meyer* v. *Construction Company,* 100 U. S., 475, the court say:

> "This record is full of protests on the part of Dennison against going on with the suit and of exceptions to the ruling which kept him in court.
>
> "Indeed, it is difficult to see what more he could have done than he did do to get out of court and take his suit with him. He remained simply because he was forced to remain and is certainly now in a condition to have the original error of what he complained corrected, in any court, having jurisdiction for that purpose."

II.

In *Powers* v. *Chesapeake and Ohio Ry. Co.*, 169 U. S., 102, the court said:

> "It is hardly necessary to add that the Railway Company, by making defense in the State Court after that court had declined to surrender jurisdiction of the case, did not lose or impair its right to insist that the case had been lawfully removed into the Circuit Court of the United States.
>
> "The defendant, notwithstanding its objection, duly saved upon this record, to the jurisdiction of the State Court, having been forced to a hearing in that court, is entitled to have the error in this respect, corrected in any court having jurisdiction for the purpose." *Removal Cases*, 100 U. S., pages 457, 475.

III.

In *Edrington* v. *Jefferson*, 111 U. S., 770-7, *held*, that the Federal Circuit Court had no power to amend said petition for removal.

Without further reviewing the authorities on the subject of amendment, it is only necessary to cite the following cases, as fully sustaining the conclusion to which we must arrive upon this subject:

> "A petition for removal, when presented to the State Court, becomes part of the record of that court, and must doubtless show, taken in connection with the other matters on that record, the jurisdictional facts upon which the right of removal depends; because, if those facts are not made to appear upon the record of that court, it is not bound or authorized to surrender its jurisdiction, and if it does the Circuit Court of the United States cannot allow an amendment

of the petition, but must remand the case. *Crehore* v. *Ohio and Mississippi R. Co.*, 131 U. S., 240; *Jackson* v. *Allen*, 132 U. S., 27.

"But if upon the face of the petition and of the whole record of the State Court, sufficient grounds for removal are shown, the petition may be amended in the Circuit Court of the United States, by leave of that court, by stating *more fully* and *distinctly* the facts which support those grounds." *Powers* v. *Railway Co.*, 169 U. S., 92. See, also, *Insurance Company* v. *Pechner*, 95 U. S., 183.

The court in the latter case said:

"This right of removal is statutory. Before a party can avail himself of it, he must show upon the record that his is a case which comes within the provisions of the statute. His petition for removal when filed becomes a part of the record in the cause. It should state facts, which, taken in connection with such as already appear, entitle him to the transfer. If he fails in this, he has not in law, shown to the court that it cannot proceed further with the cause.

* * *

"The court had the right to take the case as made by the party himself, and not inquire further. If that was not sufficient to oust the jurisdiction, there was no reason why the court might not proceed with the cause."

IV.

In *Dalton* v. *Milwaukee Ins. Co.*, 118 Fed., 876, Judge Shiras held, that the petition for removal could not be amended by averring that the amount in controversy exceeded the amount of $2,000, exclusive of interest and costs, and that the defendant was a corporation organized and existing under the laws of

the State of Wisconsin; and that if the jurisdictional facts were imperfectly stated, upon the face of the record, the Circuit Court could not cure such imperfections, and the leave to file such proposed amendment would have to be obtained from the State Court, and that the State Court did not part with its jurisdiction until its record showed that court that it had lost its jurisdiction and could no longer proceed with the case.

The court stating:

> "It certainly cannot be the fact that in cases wherein a removal is sought on the ground of diverse citizenship the jurisdiction of the State Court can be terminated by petition for removal or by amendments thereto filed in the Federal Court. In such cases the jurisdiction of the State Court can only be ended by making a proper showing of the facts justifying the removal on the face of the record in that court."

V.

In *Martin's Administrator* v. *R. R. Company,* 151 U. S., p. 673, this court defined the limits of the power of the Circuit Court to permit amendments to the petition, and said:

> *"Such amendments may be allowed when and only when, the petition, as presented to the State Court, shows upon its face sufficient ground for removal."*

In *Fife* v. *Whittell,* 102 Fed., 537, Judge Morrow denied an application by defendant for leave to amend a record so as to show defendant was a non-resident of California, saying:

> "The Federal Court has no power to grant leave to amend the petition by stating facts that show that the cause was in fact removable."

In *Shane* v. *Butte Electric R. Co.*, 150 Fed., 801, the opinion, after review of other cases, closed, on p. 812, saying, that:

> "In harmony with these general views, the Federal Courts have recognized that the statutes of removal should be construed not in a way to authorize the exercise of jurisdiction where the question is doubtful, but rather to refuse to keep a case where the jurisdiction is seriously disputable."

And the court, in that case, refused to allow the amendment proposed to show that one Jackson was a citizen of Minnesota and not a resident of Montana, as alleged in his petition to the State Court, and thus made the case removable; and that the question is a fundamentally jurisdictional one and no appeal to the discretion of the Federal Court can have consideration.

ARGUMENT.

I.

This mighty record is made up of the attempts of the defendants to defeat the restrictions of the Federal Statutes of 1887-1888. It discloses a conflict of jurisdiction, extending for nearly four years, during which the suit of the Chicago Real Estate Loan and Trust Company was begun, in May, 1907.

The Standard Oil Company, and its directors and allies, kept on foot the said *Real Estate* case, by various devices, in order to prevent the prosecution of the present case, brought on October 19, 1907, by Harding against them; and this attempt was substantially an effort to use the dead case of the Real Estate Company (which Real Estate Company had sought to dismiss ever since October 1, 1907), to kill the case of your petitioner, on behalf of himself and other minority stockholders of the Corn Products Company.

In the first attack upon the case of your petitioner, begun by said petition, filed on Nevember 4, 1907, in said *Real Estate* case, in the name of the Corn Products Refining Company, the defendants obtained a restraining order, forbidding the prosecution of the *Harding* case, and a rule to show cause why an injunction against the prosecution of said case, and why a dismissal should not be entered, and a hearing thereof terminated in the Circuit Court of the United States (Landis, J.), by a decretal order of injunction against the prosecution of said

Harding case, and holding Harding and his counsel and associates guilty of contempt of court in bringing and prosecuting said case.

Upon the appeal from said decreal order to the Court of Appeals of the Seventh Circuit, taken by Harding and his associates in January, 1908, the Court of Appeals filed its opinion, in January, 1909, but stayed, upon motion of the appellee, the issue of a mandate thereon, until May 19, 1909, but said mandate was not issued nor presented nor obeyed until the Circuit Court, upon July 1, 1909, entered its order, as directed by said Court of Appeals, in substance reversing the decree of December 26, 1907, and ordering the dismissal as moved for by said Real Estate Company, seasonably, as the court held, but denied by the Circuit Court by said decretal order, and the Circuit Court, as ordered, thereupon dismissed said petition of November 4, 1907.

II.

On November 5, 1907, the Corn Products Manufacturing Company, one of said defendants, with the consent of the remaining eighteen defendants to the Harding bill, including the Corn Products Refining Company, and by the same attorney throughout (said Levy Mayer conducting, as their common attorney, the proceedings and action of defendants throughout), filed in the Superior Court of Cook County, Illinois, a petition for the removal of the *Harding* case to said Circuit Court of the United States, and gave notice, by a notice served upon the same day upon your petitioner, that on Wednesday, the 6th

of November, 1907, James M. Sheean, solicitor of said Manufacturing Company, would present said petition for a removal; and also served with said notice a copy of said petition. In pursuance of said notice, said Levy Mayer appeared in said State Court, on November 6, 1907, and presented to said court (Judge Ball presiding) said petition for removal, and moved the court to allow the same. To this motion your petitioner, objecting, stated that he resisted the same and wished to be heard thereon, and Judge Ball, declaring that he was so much engaged for the day that he could not hear it until November 7. Said Levy Mayer made no reply for said Corn Products Manufacturing Company, for whom he appeared, and both parties left the court room, and no further action was then or later taken in said case in said court by said Corn Products Manufacturing Company.

But on the same day, November 6, 1907, said Levy Mayer, for the said Manufacturing Company, without notice to or knowledge of your petitioner, obtained the entry of the order of removal in said Circuit Court on November 6, with an injunction commanding your petitioner and counsel to take no further action in said State case.

III.

Your petitioner did not learn of said order in said Circuit Court, obtained by said Manufacturing Company, on November 6, until long afterwards, and after the hearing of November 12, 1907, had in pursuance of said rule obtained by said Refining Com-

pany by said Mayer, on November 4; thereupon this petitioner, while said hearing was pending before said Circuit Court, and while a new proceeding for alleged contempt of court described in said decretal order was set on foot by said District Judge, of his own motion, and a further rule to answer the same for next day, November 13, your petitioner applied to said Circuit Court for leave to make and file and to have heard a motion for remand of said case to said State Court, and he thereafter continued urging said court to grant such leave, at every opportunity presented, but without leave or hearing being granted.

Your petitioner, therefore, on December 23, 1907, filed his written motion to remand said case, and presented the same for hearing after due notice in said Circuit Court, on December 26, 1907; but the said court refused to hear or allow said motion to remand, as is more fully shown in said petition filed for mandamus in this case, and in our statement of the case above.

Immediately upon the said dissolution of the said injunction of December 26, 1907, your petitioner presented his motion to remand said case to said Circuit Court, filing a petition thereupon, called the Petition of June 30, 1909. This petition the court refused to allow your petitioner to file, and after much delay declared said petition denied. In the meantime, on July 9, 1909, your petitioner again moved the Circuit Court to allow said motion to remand, as prayed for in said petition of June 30, 1909, but not yet allowed to be filed nor yet passed upon by said court. And after the taking of much

testimony upon the truth of an alleged amendment of said petition for removal, the validity of which amendment for want of power on the part of said Circuit Court, your petitioner constantly denied, presenting his objections in every form and way possible known to him, and at last, on October 25, 1910, the said U. S. Circuit Court, by the said District Judge Sanborn, of Wisconsin, filed its opinion, holding that under the evidence presented before him your petitioner was a resident and citizen of Illinois, and not a resident and citizen of the State of California, as alleged in said petition filed in the State Court; and that the said case was made removable by such amendment allowed by him, and denying the truth of said original petition as to said residence; and thereupon said Circuit Court denied said motion to remand, by order entered on the 2d day of November, 1909, under date of October 23, 1909.

III.

The third attempt to defeat the jurisdiction of the State Court and maintain this interesting conflict of jurisdiction upon the part of the Federal Circuit Court, was the motion made on April 16, 1909, by said removing petitioner for leave to amend said petition of removal in said Federal Court. Despite the objection to the want of power in the Circuit Court, upon the simple ground (1st) that the appeal from said decretal order of December 26, 1907, had placed this case in the hands of the Circuit Court of Appeals, and it was still there pending, especially, upon motion of appellee of April 14 to modify the

final judgment of the Court of Appeals, and, if need be, upon the new record presented by the Clerk of the Circuit Court, to set said opinion and order aside and affirm the decretal order of December 26, 1907, which motion of April 14 was still under advisement when this motion of April 16 was made, and did not result in an order for the issue of said mandate upon said opinion until May 19, 1909, nor the entry of orders thereon until July 1, 1909; and (2nd) there was the objection, supported by the whole current of the decisions in this court, that such amendment could not be made in the Federal Court, and, especially where the proposed amendments were not formal, but contradicted the allegations of the original petition for removal; and (3d) on account of the delay of a year and a half in moving for such amendment, all were urged by your petitioner.

The opinion filed upon said motion on May 15, 1909, by District Judge Sanborn, granting (under assumed power) said motion to amend, states:

> "It seems, therefore, that the motion for leave to amend should be granted, IF the power of amendment exists. Defendant relies on *Wilbur* v. *Red Jacket, etc., Co.*, 153 Fed., 602, a case very much like this, for its procedure in bringing its petition for leave to amend. *In regard to the question of* POWER, it is insisted that no jurisdiction is shown by the original petition for removal, because the suit is not brought in the district of residence of either the plaintiff or defendant; and since Harding has not consented to sue here, and has waived nothing, the case is not now removable, under *Ex Parte Wisner,* and *In re Moore,* 209 U. S., 490. * * * Since the decision of the *Wisner* and *Moore* cases, there can be no question of the duty to remand, on

> application of the plaintiff, who has waived nothing, in the usual case, in the absence of any application to amend. But the narrow and unusual question here presented is whether a Federal Circuit Court can possibly have any jurisdiction whatever of such a case as this until the plaintiff consents. If it can, then amendment may be permitted, to show that jurisdiction actually exists, unaided by consent or waiver; BUT IF NOT, THEN A REMAND IS INEVITABLE."

As it is not even pretended that plaintiff had consented or waived his objections to jurisdiction; and, as there is no ground for such pretense known, it seems that there remains no answer to the objection of want of power on the part of the court to hear or allow said amendment during the pendency of the appeal in the Circuit Court of Appeals, and in view of the repeated decisions of this court denying the existence of such power, any further discussion of such amendment, which was afterwards allowed and attempted to be acted on, *although constantly objected to as utterly valueless and void,* would seem unnecessary.

IV.

In *Shane* v. *Butte Electric Railway Co.,* 150 Fed., 811, the court said:

> "If the fact is that Jackson was a resident of Montana, as petitioning defendant alleged in his petition to the State Court, the jurisdiction of that court was complete, * * * while if Jackson was a citizen of Minnesota," as alleged in the proposed amendment, "we will assume removal could have been had. * * * Thus we see that the proposed amendment is not one

making more certain or specific a statement made in the petition filed in the State Court, but defectively made, or to state more fully and distinctly facts stated, upon which ground of removal rests, but is a request to permit an amendment which is of substance. Indeed, it is asking the Federal Court to allow an amendment which may bring the case within the jurisdiction of the Federal Court upon the existence of a ground not presented in any way to the State Court on motion for removal, and but for which the cause was not removable. To permit the amendment would be to retain jurisdiction of a cause removed without a showing having been made in the State Court of jurisdictional facts upon which the right of removal existed. This would be directly against the great weight of authority, and the strength of the reasoning underlying the statute which gives the right of removal in certain cases. * * * A showing of cause for removal must be made to the court which first has the cause, and which need not surrender its control until facts which compel it to do so are made to appear upon the record of its proceedings. In the absence of such a showing in the State Court, the question is a fundamentally jurisdictional one, and no appeal to the discretion of the Federal Court can have consideration, for discretion cannot confer jurisdiction to retain the case, if it does not exist. * * *"

Again, page 812, the court said:

"In harmony with these general views, the Federal Courts have recognized that the Statutes of Removal should be construed not in a way to authorize the exercise of jurisdiction where the question is doubtful, but rather to refuse to keep a case where the jurisdiction is seriously disputable."

This is a case precisely like this, as to the residence of party.

V.

In *Cameron* v. *Hodges,* 127 U. S., 322, the Supreme Court said that there was no precedent known to it which authorized an amendment to be made, even in the Circuit Court, by which grounds of jurisdiction may be made to appear, which were not presented to the State Court on the motion for removal.

In *Moon on The Removal of Causes,* the author states, Sec. 165, namely, that:

> "Amendments of form, but not of substance, may be made to a petition for removal in the Federal Courts."

From this exposition of the law, the duty of the Federal Court is not a discretionary one, where an amendment is sought which presents a material ground for retention suggested, not within the scope of the grounds included in the petition presented to the State Court.

VI.

Here the Corn Products Manufacturing Company, by its president, Powers, filed his affidavit to the petition for removal, swearing that Harding was a citizen of California and of no other state, and the parties, eighteen in number, defendants herein, and their attorneys, including Levy Mayer, united in alleging that this allegation of the residence of Harding is true. It was a year and a half afterwards, upon the miserable pretense by Levy Mayer

that he was misled by the allegation by Harding in his bill that he was a resident of California, no other person even alleging or explaining to the same effect or otherwise, the statements of the petition of said residence; and that residence, strangely enough, was the residence of a well-known citizen of Chicago, who had removed to California fifteen years before, and said Mayer, residing in the same city all the time, in the next street of the said alleged residence, repeatedly alleges in the course of his discussion and argument a year and a half before this amendment, that Harding was a citizen and resident of California, and used said statement throughout the period as a ground for attack upon his personal character.

VII.

As to the petition for removal little further need be said beyond the fact that it is shown to be fatally defective by the requirements of the Statutes of '87-'88, as construed by this court in *Ex Parte Wisner*, aforesaid; but it is further submitted that there is herein, in fact, no statement as required by law of the existence of a separable controversy between the complainant and the removing petitioner. For a bare statement of a conclusion of law that a separable controversy existed is not an allegation of fact.

In *Gibbs* v. *Crandall*, 120 U. S., 105, pp. 108-109, the court said:

> "As was said in *Gold Washing & Water Company* v. *Keyes*, 96 U. S., 199, 203: 'Before [therefore] a Circuit Court can be required to

retain a cause under its jurisdiction, it must in some form appear upon the record by a statement of facts "in legal and logical form," such as is required in good pleading (1 Chit. Pl., 213), that the suit is one which "really and substantially involves a dispute or controversy," as to a right which depends upon the construction or effect of the Constitution or some law or treaty of the United States. It is not enough for the party who seeks a removal of his cause to say that the suit is one arising under the Constitution. He must state the facts so as to enable the court to see whether the right he claims does really and substantially depend on a construction of that instrument. That has not been done in this case, and the order remanding the suit is consequently affirmed.' "

Again, the case of *Holton* v. *Helvetia-Swiss Fire Insurance Co.*, 163 Fed., 659, is referred to in the *Kinney* case, 191 U. S., 78, as holding that it is necessary for the record of the State Court to show the facts giving a Federal Court jurisdiction at the time the removal petition is presented, and that such petition can be amended only by stating more clearly an ambiguous statement or by supplying some detail lacking in the original petition.

VIII.

In the *City of Newcastle* v. *Postal Telegraph-Cable Co.*, 152 Fed., 572, on page 573, in speaking of the defendant, the court said:

"Its allegations as to interstate commerce and its occupation of post-roads are here introduced for the first time and form no part of the ground upon which it based its petition for the

removal of the cause from the courts of Lawrence County; and, moreover, are not supported by any facts which show in what way any question does arise in this case involving any construction of the Constitution or law of the United States. A mere allegation to that effect without a statement of facts showing how such question can arise and the nature and character of it but rather giving only a legal conclusion is insufficient. *Carson* v. *Dunham*, 121 U. S., 426, and *Gold-Washing Company* v. *Keyes*, 96 U. S., 199.

"See, also, *Santa Clara County* v. *Goldy Machine Company*, 159 Fed., 750, where the syllabus is as follows, namely, 'where a removal petition based entirely on diversity of citizenship was filed by one of the defendants alone, and wholly failed to disclose the fact that the other defendant was merely a nominal or formal party to the action, and such fact did not sufficiently appear elsewhere in the record, the petition was fatally defective, since, for the purpose of removal, the parties must be considered collectively.' WHERE A REMOVAL PETITION IS DEFECTIVE FOR FAILURE TO STATE THE NECESSARY JURISDICTIONAL FACTS, THE OMISSION IS FATAL TO THE RIGHT OF REMOVAL, AND CANNOT BE SETTLED OR CURED IN THE FEDERAL COURT BY AMENDMENT."

Further, such an allegation is valueless to raise the question of a separable controversy, on its face, and is a mere subterfuge and falsehood. For the Corn Products Company was of course a necessary and indispensable party to any controversy between one of its minority stockholders having no rights save as such stockholder against the removing petitioner.

The alleged *nominal* defendants are charged as joint *tort feasors* with the corporations made de-

fendant and not alone as directors, and hence the existence of a separable controversy with a minority stockholder so stated as a legal conclusion only is a subterfuge, and deserves no other notice, especially as the removing party is charged by the bill as merely an agent and custodian, servant and trustee in charge of factories.

IX.

In Judge Sanborn's opinion of May 15, 1909, he states that the Circuit Court by its order of November 6, 1909, took jurisdiction of the case, and that it had the power to do so, and that order was made at a prior term of court and could not be disturbed or reviewed by the Circuit Court. This language is a begging of the question of power; and also ignores the fact that such order was purely interlocutory, and expressly stated that it was "all until the further order of this court." That opinion of May 15, 1909, also states that the motion to remand the *Harding* case was *not regarded as important* until said injunction of December, 1907, was reversed, and that the question of such remand *then* became of great importance to the "*respective* parties." This is strange language, indeed, in face of the record showing Mr. Harding's persistent efforts to get his motion to remand allowed, and his continued objections to the jurisdiction of the court.

X.

It will be observed that the alleged discovery of the alleged falsity of Mr. Harding's statement in his bill as to his citizenship, is claimed to have been made by Mr. Mayer, in his affidavit attached to the petition to amend removal petition—that *discovery* is claimed to have been made on April 12, 1909, the same day the petition for *certiorari* was denied by the Supreme Court. In that affidavit, Mr. Mayer stated that he was the one who personally prepared the removal petition signed by Mr. Sheean, as solicitor for the petitioner. Mr. Parmenter's affidavit also stated his *discovery* of the truth, as claimed, was on or about the same date, April 12, 1909.

XI.

It may be further observed that Mr. Mayer's *waking up* to the necessity of some new *invention* or "discovery" to hold the case in the Federal Court was not until after the petition for *certiorari* was denied, and it was *on that very day* that he gave notice of his motion to modify the judgment of the Court of Appeals. He was quite willing to adopt the averments of the Bill of Complaint as to the citizenship of complainant, when he prepared the removal petition of November 5, 1907; and, in the hearing before Judge Landis on November 13, after referring to the litigation between Mr. Harding and his wife, he said: "And all of a sudden, Harding, who was born in Illinois, some seventy years ago, changed his residence to California, and became a

citizen of the Golden State, and he was not a citizen of Illinois, and therefore he filed a bill there for divorce against his wife, who had pending here her separate maintenance proceeding * * *." (Part II of "Exhibit A," pages 175-76.)

In conclusion, we submit that the relief sought by this petition for mandamus in this case should be granted.

Respectfully submitted.

WILLIAM J. AMMEN,
Attorney for Petitioner.

EX PARTE HARDING, PETITIONER.

No. —. Original. Submitted December 12, 1910.—Decided February 20, 1911.

The general rule that a court, having jurisdiction over the subject-matter and the parties, is competent to decide questions arising as to its jurisdiction and that its decisions on such questions are not open to collateral attack, applied in this case; and mandamus refused to compel the Circuit Court to remand a case in which it decided that it had jurisdiction on the issues of citizenship and separable controversy.

There is nothing peculiar in an order of the Circuit Court refusing to remand which differentiates it from any other order or judgment of a Federal Court concerning its jurisdiction.

In this case the exceptional rule that mandamus will lie to the Circuit Court to correct an abuse of judicial discretion in retaining a case over which it has not jurisdiction does not apply.

It is the duty of this court to reconcile decisions and, in order to enforce the correct doctrine, to determine which rest upon the right principle and to overrule or qualify those conflicting therewith.

Conflicting decisions regarding issuing mandamus to the Circuit Court to correct its decisions in regard to jurisdiction over cases removed from the state court reviewed and harmonized.

In this case, *Ex parte Hoard*, 105 U. S. 578, and cases following it applied, as expressing the general principle involved; *Virginia* v. *Rives*, 100 U. S. 313, and cases following it distinguished, as applicable only to exceptional instances not involved in this case; *Ex parte Wisner*, 203 U. S. 449; *In re Moore*, 209 U. S. 490, and *In re Winn*, 213 U. S. 458, disapproved in part and qualified.

THE facts are stated in the opinion.

Mr. William J. Ammen for petitioner:

The original removal petition, whether considered alone or in connection with the entire record, not only failed to show a removable case, but affirmatively showed that the case was not removable under the law, on the ground of diverse citizenship. *In re Moore*, 209 U. S. 490; *Ex parte Wisner*, 203 U. S. 449; *Southern Pacific Co.* v. *Burch*, 152 Fed. Rep. 168; *Goldberg &c. Co.* v. *German Ins. Co.*, 152 Fed. Rep. 831; *Yellow Aster Co.* v. *Crane Co.*, 150 Fed. Rep. 580; *Gillespie* v. *Pocahontas &c. Co.*, 160 Fed. Rep. 742; *Blunt* v. *Southern Ry. Co.*, 155 Fed. Rep. 499; *Boston Mining Co.* v. *Montana Ore Co.*, 188 U. S. 632, 640; *In re Winn*, 213 U. S. 464; *McClellan* v. *McKane*, 159 Fed. Rep. 165; *Hooe* v. *Jamieson*, 166 U. S. 395.

No separable controversy was pointed out in said original petition for removal, as required by the decisions. *Gibbs* v. *Crandall*, 120 U. S. 105, 108; *Gold Washing Co.* v. *Keyes*, 96 U. S. 199; *Newcastle* v. *Postal Co.*, 152 Fed. Rep. 572.

The claim of separable controversy between said Corn Products Company, and Harding, is so absurd upon a mere cursory reading of the bill of complaint that the Circuit Court should not have considered the same; and

relief by mandamus should not be refused on the ground that a decision of that question involved judicial discretion, although the exercise of judicial discretion on such a question might be required in a case where such question appears to be reasonably disputable.

Even if such separable controversy existed, the citizenship of the alleged parties thereto was not such as to make the case removable, under the law.

The alleged removal was void upon the further ground that the state court was not permitted to examine, and consider, and pass upon, the removal petition.

The order of the Circuit Court ordering the transcript of record of state court filed in Circuit Court, and enjoining Harding from the further prosecution of his suit in the state court, until the further order of the Circuit Court, was void.

The so-called supplement filed in the Circuit Court was unauthorized and void, and did not and could not help out the original removal petition filed in the state court.

Harding is not chargeable with laches. He has never waived his right to have said original motion to remand allowed.

The Circuit Court had no power to allow the amendment to the removal petition changing the vital averments made in said original removal petition filed in the state court. *Powers* v. *Chesapeake & O. R. R. Co.*, 169 U. S. 92, 101; *Shane* v. *Butte &c. Co.*, 150 Fed. Rep. 801; *Crehore* v. *Railway Co.*, 131 U. S. 240; *Jackson* v. *Allen*, 132 U. S. 27; *Graves* v. *Corbin*, 132 U. S. 572, 590; *Martin's Admr.* v. *Railroad Co.*, 151 U. S. 673, 691; *Carson* v. *Dunham*, 121 U. S. 421, 427; *Fife* v. *Whittell*, 102 Fed. Rep. 537; *Dalton* v. *Milwaukee Ins. Co.*, 118 Fed. Rep. 876; *Stone* v. *South Carolina*, 117 U. S. 430; *Cameron* v. *Hodges*, 127 U. S. 322; Moon on Removal of Causes, § 165; *Fitzgerald* v. *Missouri Pacific Ry. Co.*, 45 Fed. Rep. 812; *Macey Co.* v. *Macey*, 135 Fed. Rep. 725, 729, 730; *Santa*

Clara County v. *Goldy Machine Co.*, 159 Fed. Rep. 750; *Wallenburg* v. *Missouri Pacific Ry. Co.*, 159 Fed. Rep. 217; *Healy* v. *McCormick*, 157 Fed. Rep. 218; *Holton* v. *Helvitia &c. Co.*, 163 Fed. Rep. 659; *Kinney* v. *Columbia Assn. Co.*, 191 U. S. 78; *Murphy* v. *Gold Co.*, 98 Fed. Rep. 321.

The orders permitting petitioner to amend, and allowing such amendment to be filed, the said amendment so filed, and all subsequent proceedings based thereon, were wholly without power or jurisdiction of the Circuit Court, and void.

It clearly appearing that Harding will be entitled to a remand of his case after a tedious and expensive hearing on the merits, on appeal from whatever decree may be then entered, this should be duly considered by this court, as even the certainty of such ultimate remand does not constitute an adequate remedy in the premises.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

By a motion for leave to file a petition for mandamus, George F. Harding seeks the reversal of the action of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, in taking jurisdiction over a cause as the result of a refusal to grant a request of Harding to remand the case to a state court. The facts shown on the face of the motion papers are these:

On October 19, 1907, George F. Harding, the petitioner, alleging himself to be a resident of the State of California, sued in an Illinois state court various corporations alleged to be created by and citizens of the State of New Jersey and fourteen individuals whose citizenship and residence were not given. The suit was brought by Harding as a stockholder in the Corn Products Company, one of the defendants, and the object of the suit was to annul an al-

leged unlawful merger of that company and for relief in respect of an asserted misappropriation of its assets. On November 6, 1907, the Corn Products Company applied to remove to the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, on the ground that there was a separable controversy between it and Harding. By separate petitions all the other defendants united in the prayer for removal. The state court not having acted on the petition for removal, the judge of the United States court, upon the application of the Corn Products Company, ordered the transcript of record from the state court to be filed and the case to be docketed. This being done, the Corn Products Company filed what was styled an amendment and supplement to the petition for removal, stating the residence and citizenship of the individuals named as defendants in the original bill, four of them being averred to be residents of Chicago, Illinois, one of Pekin, Illinois, and the others citizens and residents of States other than Illinois.

In December, 1907, Harding moved to remand to the state court, in substance upon the ground that there was no separable controversy and that the requisite diversity of citizenship was not shown by the petition for removal, and especially directed attention to the fact that at the time of the commencement of the suit in the state court he, Harding, was not a resident of the district, and that none of the corporate defendants were such residents.

Prior to the bringing of the Harding suit a suit had been brought in an Illinois state court by the Chicago Real Estate and Trust Company, an Illinois corporation and a stockholder in the Corn Products Company, upon substantially the same grounds as those subsequently alleged in the Harding suit, against the principal corporations and individuals who were thereafter made defendants in the Harding suit. This cause had been removed by the Corn Products Company into the Circuit Court of the United

States for the Northern District of Illinois, Eastern Division, and on its removal, at the instance of the Corn Products Company the court had restrained the real estate company, its officers, agents, attorneys, etc., from further prosecuting the cause in the state court. Immediately after the bringing of the Harding suit in the state court the Corn Products Company applied to the Circuit Court, in the real estate company suit, to restrain Harding from prosecuting his suit on the ground that the bringing of the same was a violation of the previous restraining order. The court issued a temporary restraining order. Thereafter, as we have said, the Harding suit was removed on the application of the Corn Products Company to the Circuit Court of the United States, and the motion to which we have referred was made by Harding to remand. That motion to remand, however, in consequence of the restraining order, which had been made permanent, was not heard until the summer of 1909, after the restraining order above referred to had been dissolved by the Circuit Court of Appeals. 168 Fed. Rep. 658. Before the motion to remand, however, was passed upon the Circuit Court granted permission to the Corn Products Company to amend its removal petition by alleging that at the time of the commencement by Harding of his suit and continuously thereafter he was a citizen of Illinois and a resident of Chicago in that State. To this Harding objected on the ground that the court was without power to allow an amendment, and that its jurisdiction was to be tested by the averments of the original removal petition. The permitted amendment having been filed, the motion to remand was denied. Harding thereupon, reiterating his objection to the allowance of the amendment and to the jurisdiction of the court to do other than remand the cause, traversed the averment in the amended removal petition as to his Illinois citizenship and residence, and specially prayed "that there may be a speedy hearing and a decision of such issue of citizen-

ship and a remand of this cause to the state court by the order of this court, . . ." The request for hearing was granted. A large amount of evidence was introduced on such hearing, which extended over a period of more than fifteen months, and the taxable costs, it is said, "ran up into several thousands of dollars." Finally, on October 25, 1910, the issue was decided against Harding. 182 Fed. Rep. 421. The court, finding from the proof that Harding was, as alleged in the amended petition, a citizen and resident of the State of Illinois, expressly refused the prayer for removal made by Harding in his answer to the amended petition; in other words, the court reaffirmed and reiterated its previous action in refusing to remand the cause. Whether these facts give such color of right to the contention that we have jurisdiction to review the action of the trial court by the writ of mandamus as to lead us to be of opinion that further argument at bar is necessary, and therefore a rule to show cause should issue, is then the question for decision.

The doctrine that a court which has general jurisdiction over the subject-matter and the parties to a cause is competent to decide questions arising as to its jurisdiction, and therefore that such decisions are not open to collateral attack, has been so often expounded (see *Dowell* v. *Applegate*, 152 U. S. 327, 337, and cases cited), and has been so recently applied (*Hine* v. *Morse*, 219 U. S. 493), that it may be taken as elementary and requiring no further reference to authority. Nor is there any substantial foundation for the contention that this elementary doctrine has no application to decisions of courts of the United States refusing to remand causes to state courts, since there is nothing peculiar in an order refusing to remand which differentiates it from any other order or judgment of a court of the United States concerning its jurisdiction. The importance of the subject which is involved in the contrary assertion, the apparent conflict between certain

decided cases dealing with the right to review by mandamus orders of Circuit Courts refusing to remand, and a long and settled line of other cases relating to the same subject, the confusion and misapprehension which must result unless the conflict is reconciled or abated, and the duty to remove obscurity, as far as it may be done, concerning the review of questions of jurisdiction, all lead us to give the subject a more extended examination than it would otherwise be entitled to receive.

In *Ex parte Hoard*, 105 U. S. 578, the court was called upon to consider whether the judgment of a Circuit Court of the United States, declining to remand a civil cause to a state court from which it had been removed, was reviewable by the extraordinary process of mandamus. In refusing to exert jurisdiction by mandamus and considering the inherent nature of the powers of a Circuit Court, it was declared that "Jurisdiction has been given to the Circuit Court to determine whether the cause is one that ought to be remanded," and it was also observed that "No case can be found, however, in which a mandamus has been used to compel a court to remand a cause after it has once refused a motion to that effect." Calling attention to the fact that the act of 1875, in § 5, expressly gave an appeal to or a writ of error from this court for the review of orders of Circuit Courts remanding causes, without regard to the amount involved, the court said: "The same remedy has not been given if a cause is retained. It rests with Congress to determine whether a cause shall be reviewed or not. If no power to review is given, the judgment of the court having jurisdiction to decide is final."

In *In re James Pollitz*, 206 U. S. 323, the facts were these: Pollitz, a citizen of the State of New York, sued in the Supreme Court of that State the Wabash Railroad Company, a consolidated corporation existing under the laws of the States of Ohio, Michigan, Illinois and Missouri, and a citizen of the State of Ohio, and various other defend-

ants, chiefly citizens and residents of the State of New York. The Wabash Company removed the cause to the Circuit Court of the United States, on the ground of a separable controversy. A motion of Pollitz to remand was denied. The controversy was decided by this court on the hearing of a rule, which was granted on the application of Pollitz for a writ of mandamus to direct the remanding of the cause. The court, after stating (p. 331) the general rule that "mandamus cannot be issued to compel the court below to decide a matter before it in a particular way or to review its judicial action had in the exercise of legitimate jurisdiction, nor can the writ be used to perform the office of an appeal or writ of error," refused to take jurisdiction and review the action of the court below, and therefore declined to issue the writ.

Ex parte Nebraska, 209 U. S. 436, presented the following facts: In a suit against a railway company, commenced in a court of the State of Nebraska, the State, its attorney general, the railway commission and the members of the commission individually were plaintiffs. The defendant railway removed the cause to the United States court, upon the ground that the State was not a proper or necessary party to the suit, and that the controversy was wholly between citizens of different States. A motion to remand having been denied by the Circuit Court, this court issued a rule to show cause why a mandamus should not be allowed ordering the remanding of the cause. Upon the hearing on the return to this rule the court declined to take jurisdiction and review the action of the trial court. It was said that the Circuit Court had jurisdiction to pass upon the questions raised by the motion to remand, and if error was committed in the exercise of its judicial discretion "the remedy is not by writ of mandamus, which cannot be used to perform the office of an appeal or writ of error." After declaring that "the applicable principles have been laid down in innumerable cases," the court cited

Ex parte Bradley, 7 Wall. 364; *Ex parte Loring*, 94 U. S. 418; *In re Rice*, 155 U. S. 396; *In re Atlantic City Railroad*, 164 U. S. 633. The case of Pollitz was also cited and reviewed.

In *Ex parte Gruetter*, 217 U. S. 586, the doctrine of *In re Pollitz* and *Ex parte Nebraska* was reaffirmed. The case was this: An action commenced by Gruetter in a state court was removed into a Circuit Court of the United States and Gruetter moved to remand. One ground of the motion was that the case was not removable because it was not an action of a civil nature, but was one to recover penalties. It was also urged that the petition and record did not show that the suit was sought to be removed to the Circuit Court of the United States for the district in which either the plaintiff or the defendant resided. On return to a rule to show cause why a mandamus should not be granted, the court declined to take jurisdiction of the case, saying (p. 588):

"There was no controversy as to there being diversity of citizenship. The defendant was a corporation of Kentucky, and plaintiff was a citizen of Tennessee. Inasmuch as we are of opinion that the Circuit Court of the United States had jurisdiction to determine the questions presented, we hold that mandamus will not lie. The final order of the Circuit Court cannot be reviewed on this writ. *In re Pollitz*, 206 U. S. 323."

It is patent from the review of the decided cases just made that the contention that the order of the court below refusing to remand the cause is susceptible of being here reviewed by the extraordinary process of a writ of mandamus, in other words, that that writ may be used to subserve the purpose of a writ of error or an appeal, is so completely foreclosed as not to be open to contention, unless it be that other cases which are relied upon as sustaining our jurisdiction to issue the writ of mandamus have either overruled the line of cases to which we have referred, or have

so qualified them as to cause them to be here inapplicable. We therefore come to consider the cases upon which petitioner relies to ascertain whether they sustain either of these views. The cases are *Ex parte Wisner*, 203 U. S. 449, *In re Moore*, 209 U. S. 490, and *In re Winn*, 213 U. S. 458. But to an elucidation of these cases it is necessary that the briefest possible recurrence be had to two leading cases which long preceded them, viz., *Virginia* v. *Rives*, 100 U. S. 313, and *Virginia* v. *Paul*, 148 U. S. 107.

In *Virginia* v. *Rives* a prosecution of persons accused of murder was removed from a state court to a Circuit Court of the United States. The latter court moreover, under a writ of *habeas corpus cum causa*, took the prisoners from the custody of the state authorities. The case in this court arose upon an application by the Commonwealth of Virginia for a rule to show cause why the prisoners should not be returned to the state court for trial. On hearing this court took jurisdiction over the cause, issued the writ of mandamus and directed the return of the accused. Speaking of the functions of the writ of mandamus, the court said (p. 323): "It does not lie to control judicial discretion, except when that discretion has been abused; but it is a remedy when the case is outside of the exercise of this discretion, and outside the jurisdiction of the court or officer to which or to whom the writ is addressed." It is obvious from the opinion of the court and the concurring opinion that jurisdiction over the cause was taken because of the extraordinary abuse of discretion disclosed by the power attempted to be exerted, the confusion and disregard of constitutional limitations which the asserted power implied, and because under the law as it then stood no power would otherwise have existed to correct the wrongful assumption of jurisdiction by the Circuit Court.

In *Virginia* v. *Paul*, 148 U. S. 107, a person in the custody of the state authorities, charged with murder, was released under a writ of *habeas corpus* issued by a district

judge. Subsequently the Circuit Court of the United States took, by way of removal, jurisdiction over the prosecution. The Commonwealth of Virginia applied to this court for a mandamus to remand the prosecution and to restore the accused to the custody of the State authorities. The court, reaffirming the doctrine of *Virginia* v. *Rives*, pointed out that to wrongfully divest the State of its right to prosecute in its own courts for crimes committed against its authority was a gross abuse of discretion, which if not corrected by mandamus could not be done in any other form. A mandamus to remand was issued. The court, however, declined to review the order discharging on *habeas corpus*, on the ground that on the face of the application for *habeas corpus* issues had been presented which the judge had a right to decide, and if error was committed there was a remedy by appeal.

In *Ex parte Wisner*, 203 U. S. 449, mandamus was sought to compel a Circuit Court of the United States to remand a civil cause to the state court from which it had been removed and which the Circuit Court had refused to remand. The case was one where, although there was diversity of citizenship, neither of the parties resided in the particular district to which the suit had been removed. This court took jurisdiction. Reviewing the action of the court below, it was observed that the absence of residence within the district of either of the parties demonstrated the absolute want of authority of the Circuit Court over the cause, and that even if the objection was susceptible of being waived, a waiver by both parties was essential, and the record did not disclose that there had been such waiver. Considering the right to revise by mandamus the action of the Circuit Court in refusing to remand, no reference whatever was made to the existence of statutory remedies to correct the error found to have been committed, and no authority was cited, it being simply observed: "Our conclusion is that the case should have been remanded, and,

as the Circuit Court had no jurisdiction to proceed, that mandamus is the proper remedy."

In re Moore, 209 U. S. 490, was also a case of removal, where there was diversity of citizenship but neither of the parties resided in the particular district. The Circuit Court had refused to remand. Taking jurisdiction to review such action, on application for a writ of mandamus, this court held that as there was diversity of citizenship there was general jurisdiction in the Circuit Court, and that the objection that neither party resided within the district was a matter susceptible of being waived by the parties and that such waiver had taken place. The observations in *Ex parte Wisner* to the contrary were expressly disapproved. The action of the Circuit Court in refusing to remand was consequently approved. No discussion was had or authority referred to upon the question of the right to review by mandamus the action of the Circuit Court, the right to exert such authority having in effect been assumed as the result of the decision in the Wisner case.

In *In re Winn*, 213 U. S. 458, an action commenced in a state court had been removed into a Circuit Court of the United States, not upon diversity of citizenship, but upon the ground that the case stated was one arising under the laws of the United States. The Circuit Court denied a motion to remand. Upon application for mandamus this court took jurisdiction to review such action and directed that the case be remanded, upon the ground that the cause of action when rightly construed did not arise under any provision of the Constitution or under any law of the United States. Referring to some of the previous cases, and manifestly noting an apparent conflict between them, it was said that this court had declined to exert jurisdiction by mandamus in *Ex parte Nebraska* and *In re Pollitz*, because those cases but exemplified the exercise of judicial discretion by the Circuit Court as to a matter within

its jurisdiction, while the case in hand presented a question of a want of jurisdiction in the Circuit Court, clearly apparent on the face of the record, and therefore that court when it decided that the cause of action alleged arose under a law of the United States, could not possibly have exercised a discretion to decide a matter which was within its jurisdiction. *Virginia* v. *Rives* and *Virginia* v. *Paul* were approvingly cited, and it was said that in case of a refusal to remand, "although the aggrieved party may also be entitled to a writ of error or appeal," mandamus may be resorted to. On this subject it was further observed: "Mandamus, it is true, never lies where the party praying for it has another adequate remedy, . . . but where, without any right, a court of the United States has wrested from a state court the control of a suit pending in it an appeal or writ of error, at the end of long proceedings, which must go for naught, is not an adequate remedy."

Comprehensively considering the two lines of cases, one beginning with *Ex parte Hoard*, 105 U. S. 578, and ending with *Ex parte Gruetter*, 217 U. S. 586, and the other beginning with *Virginia* v. *Rives*, 100 U. S. 313, and ending with *In re Winn*, 213 U. S. 458, it is to be conceded that they are apparently in conflict, both as to the assertion of power which one line upholds to view by mandamus the action of the United States Circuit Court in refusing to remand and the non-existence of such power which the other line of cases expounds, and also as to much of the reasoning in the opinions in some of the cases. Thus the ruling in *Ex parte Hoard*, that where in a civil case statutory remedies by error or appeal are provided for the ultimate review of errors committed by a court in determining its jurisdiction, such statutory provisions are, in their nature, exclusive, and therefore deprive of the right to resort to the remedy by mandamus, is directly in conflict with the jurisdiction which was exercised in *Ex parte Wisner*, *In re Moore* and *In re Winn*, as those cases were civil cases, and the right

to review the error, if any, committed by the Circuit Court in refusing to remand was regulated by statute. So also the statement, by way of reasoning, in the opinion in *In re Winn*, to the effect that in case of a refusal to remand "the remedy by mandamus is available, although the aggrieved party may also be entitled to a writ of error or appeal," is in direct conflict with the reasoning upon which the decision in *Ex parte Hoard* was based. The conflict just stated becomes more manifest when the ruling in *Virginia* v. *Paul* is considered, since in that case the court declined by mandamus to review the action of the court below in taking one accused of crime by a writ of *habeas corpus* from the custody of the state authorities, on the ground that *prima facie* there was jurisdiction to issue the writ of *habeas corpus*, and a remedy by appeal existed to review the action of the Circuit Court. Moreover, the decision in *In re Pollitz*, that there was not power to review the action of the court below in refusing to remand because the Circuit Court, in passing upon the question as to whether, on the face of the papers, a separable controversy was alleged decided a matter within its jurisdiction, and which involved the exercise of judicial discretion, cannot be harmonized with the ruling in *Ex parte Wisner* and *In re Moore*, that the action of a Circuit Court in refusing to remand could be reviewed by mandamus, because the court, in deciding whether the parties had waived the right to be sued in a particular district, had not been called upon to decide a matter within its jurisdiction involving the exercise of judicial discretion. This conflict becomes more obvious when the ruling in *In re Winn* and *Ex parte Gruetter* are contrasted, the one deciding that the action of the Circuit Court in refusing to remand because, from an analysis of the pleadings, it was found that a claim of Federal right was presented, was reviewable by mandamus, since it was plain, as a matter of law, that the court erred, and therefore its decision involved no element of judicial discretion, and

the other deciding that the denial by a Circuit Court of a motion to remand based upon the ground, among others, that on the face of the papers the suit was not removable, because it was not of a civil nature, but was for a penalty, was not reviewable by mandamus, because the decision of such a question was within the jurisdiction of the Circuit Court, and therefore involved the exercise of judicial discretion.

We must then either reconcile the cases or if this cannot be done determine which line rests upon the right principle and having so determined overrule or qualify the others and apply and enforce the correct doctrine. This is the case, since to do otherwise would serve only to add to the seeming confusion and increase the uncertainty in the future as to a question which it is our plain duty to make free from uncertainty. Coming to the origin of the two lines of cases it is manifest that it was not conceived that there was conflict between them, since *Virginia* v. *Rives* and *Ex parte Hoard* were practically contemporaneously decided and were treated, the one as relating to an exceptional condition, that is, an effort to remove a criminal prosecution which if wrong was committed no power otherwise to redress than by mandamus existed, and the other but involved the application of the well-settled rule as to civil cases concerning which the right to review by error or appeal was generally regulated by statute. Following down the two lines of cases it is equally manifest that it was never conceived that they conflicted with each other, because some of the cases were also practically contemporaneously decided without the suggestion that one was in conflict with the other; indeed, the decisions in *In re Moore* and *Ex parte Nebraska* were announced on the same day. When the cases are closely analyzed, we think the cause of the conflict between them becomes at once apparent. As we have previously pointed out, no authority was referred to in *Ex parte Wisner* sustaining the taking in that case of

jurisdiction to review by mandamus the ruling of the Circuit Court, although in the course of the opinion the statement was made with emphasis that the face of the record disclosed an entire absence of jurisdiction in the court below. In the opinion, however, in *In re Pollitz* the Wisner case was referred to and in pointing out why it was not apposite and controlling it was observed that that case (the Wisner) presented a total absence of jurisdiction, involving no element of discretion, and *Virginia* v. *Rives* was cited, manifestly as indicating the basic authority on which the jurisdiction to review by mandamus had been exerted in the Wisner case. Again, in *In re Winn* it is to be observed that not only was *Virginia* v. *Rives* cited, but the cases of *Virginia* v. *Paul* and *Kentucky* v. *Powers*, 201 U. S. 1 (the last of which also concerned a criminal prosecution in which the doctrine of *Virginia* v. *Rives* had been applied), were also cited, evidently for the purpose of pointing out the source from whence came the doctrine of the right to review by mandamus under the facts presented. Bearing these matters in mind it plainly results that the conflict presented has arisen, not because of the announcement in any of the cases of any mistaken doctrine as to jurisdiction, or of any wrongful decision of any of the cases on the merits, but has simply been occasioned, beginning with *Ex parte Wisner*, from applying the exceptional rule announced in *Virginia* v. *Rives* to cases not governed by such exceptional rule but which fell under the general principle laid down in *Ex parte Hoard* and the line of cases which have followed it. Under these circumstances it becomes our plain duty, while not questioning the general doctrine announced in any of the cases, yet to disapprove and qualify *Ex parte Wisner*, *In re Moore* and *In re Winn* to the extent that those cases applied the exceptional rule of *Virginia* v. *Rives*, and thereby obscured the broad distinction between the general doctrine announced in *Ex parte Hoard* and the cases which have followed it and the

exception established by *Virginia* v. *Rives* and the cases which have properly applied the doctrine of that case. Our duty to take this course arises not only because of the misconception which must otherwise continue to exist, but also because it is to be observed that material portions of the act of 1875, which were made the basis of the ruling in *Ex parte Hoard*, are yet in force, and because the cogency of the considerations arising from this fact are greatly increased by the duty to give effect to the provisions of the judiciary act of 1891 concerning the review of final orders and judgments or decrees of the Circuit Courts of the United States.

As then our conclusion is that the case under consideration is not controlled by the ruling in *Ex parte Wisner* or kindred cases, but is governed by the general rule expressed in *Ex parte Hoard* and followed in *In re Pollitz* and *Ex parte Nebraska*, and, lastly, applied in *Ex parte Gruetter*, it clearly results that the application for leave is without merit, and

Leave to file is denied.